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OF THE

SOCIETY OF COMPARATIVE LEGISLATION.

EDITED FOR THE SOCIETY BY

SIR JOHN MACDONELL, C.B., LL.D.,

AND

EDWARD MANSON, ESQ.

"Δεῖ καὶ τὰς ἄλλας ἐπισκέψασθαι πολιτείας . . . ἵνα τό τ'ὀρθῶς ἔχον ὀφθῇ καὶ τὸ χρήσιμον."—ARIST. *Pol.* II. 1.

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THE RT. HON. SIR ARTHUR WILSON, K.C.I.E.

SOME thirty years ago Mr. Arthur Wilson was well known to the legal world as the author of *Wilson's Judicature Acts*. After a brilliant career at Trinity College, Dublin, he was called to the English Bar in 1862, with a certificate of honour. For two years he was a reporter on the staff of the Incorporated Council of Law Reporting, and he soon acquired a considerable practice at the junior bar. As an expert in procedure he was entrusted by Lord Cairns with the important task of drawing up the Rules of Court which were scheduled to the Supreme Court of Judicature Act, 1875, and his edition of the Judicature Act, which speedily followed the passing of the Act of 1875, was at once recognised as a standard work. In 1878 he accepted the post of judge of the High Court at Calcutta, and held that post for fourteen years, until 1892. During this period he was for two years Vice-Chancellor of the Calcutta University, and was President of the Commission appointed to inquire into the unsavoury Crawford scandals. In 1892 he returned to England and accepted the post of legal adviser to the India Office; and he was made a K.C.I.E. in 1898. In 1902 it became urgently necessary to find some eminent lawyer, with Indian experience, to continue the work in connection with Indian appeals which had for many years been admirably conducted by Sir Richard Couch and Lord Hobhouse, and Sir Arthur Wilson was selected for this purpose. He resigned his post at the India Office, was made a Privy Councillor, and placed on the Judicial Committee of the Privy Council. In that capacity he takes an active part in expounding the various systems of law which are administered in different parts of the British dominions, and in solving the legal and constitutional problems which are submitted for the decision of the Judicial Committee. He delivered, and presumably drafted, the judgment in the recent Kathiawar cases, which dealt with the nature of the jurisdiction exercised by British Courts in the minor native states of India, and, finally, he was selected to be one of the three Commissioners appointed to decide questions arising under the Education Bill.

NOTES ON THE EASEMENT OF LIGHT IN ENGLAND AND ELSEWHERE.

[*Contributed by* H. A. DE COLYAR, K.C.]

SINCE the notable decision of the House of Lords in *Colls* v. *Home and Colonial Stores Limited*,[1] the easement[2] of light has become a topic of considerable public interest. The decision in question has, it is asserted, "largely changed the law relating to light."[3] Though the accuracy of this assertion may well be questioned, having regard to previous authorities,[4] the

[1] (1904) A.C. 179; overruling the decision of the C.A. in *Warren* v. *Brown*, (1902) 1 K.B. 15. See also *Kine* v. *Jolly*, (1905) 1 Ch. 480 C.A.; *Ambler* v. *Gordon*, (1905) 1 K.B. 417; *Higgins* v. *Betts*, (1905) 2 Ch. 210.

[2] The word "easement" is sometimes used to denote the "dominant right" and the word "servitude" the correlative obligation (*Century Dict.* vol. iii. tit. "Easement," p. 1823; *ibid.* vol. vii. tit. "Servitude," p. 5519); though the latter word would seem wide enough to comprise both right and obligation (Gale on *Easements*, 7th ed. p. 2). In English law both right and obligation are usually comprised by the word "easement" (see per Lord Coleridge C.J. in *Hawkins* v. *Rutter*, 1892, 1 Q.B. at p. 671, and see Goddard on *Easements*, 6th ed. p. 2), which is probably of old French or Norman derivation, and has been adopted by English jurists in preference to the term "servitude" (*servitus*) of the Roman law (see Salmond's *Jurisprudence*, p. 513, note 1), to which, however, it is analogous (per Cresswell J. in *Smith* v. *Kenrick*, 1849, 7 C.B. at pp. 565–6); though Roman jurists regarded an easement as being one only of the class "Servitudes," which, according to them, consisted of "easements" and "profits *à prendre*" (Sir W. Rattigan's *Science of Jurisprudence*, 3rd ed. p. 173; Peacock's *Law relating to Easements in British India*, pp. 38, 39). The Indian Legislature, whether wisely or not is disputed (see Sir William Rattigan's *Science of Jurisprudence*, 3rd ed. p. 174; Peacock's *Law relating to Easements in British India*, pp. 6 *et seq.*), disregards, both in the Indian Limitation Act (XV. of 1877) and in the Indian Easements Act (V. of 1882), the distinction, recognised by English law, between easements and profits *à prendre* (*Chundee Churn Roy* v. *Shib Chunder Mundel*, 1880, 1 L.R. 5 Cal. 945), as do also the various Codes Civil, now in force, which are based on the Roman civil law.

[3] See Preface to Hudson and Inman's *Law of Light and Air*, 2nd ed.

[4] See *Aldred's Case*, (1620) 5 Co. Rep. 102; Rolle's *Abridgment*, ii. 140, tit. "Nusans" G; *Clarke* v. *Clarke*, (1865) L.R. 1 Ch. App. 16; *Fishmongers' Company* v. *East India Company*, (1752) 1 Dick. 163; *Bagram* v *Kettranath Karformah*, (1869) 3 Beng. L.R. O.J.C., pp. 50, 51. All these authorities seem to be in harmony with the decision of the House of Lords in *Colls* v. *Home and Colonial Stores Limited*, *supra*, which, it is submitted, has left the obstruction of ancient lights still as it always has

result of the decision of the House of Lords, in the case above mentioned, is certainly to remove any lingering doubts as to the extent of the easement under consideration, and to confine henceforward, within reasonable limits, the prescriptive claims of householders to access of light, which, uncurtailed, "would render it almost impossible for towns to grow, and would formidably restrict the rights of people to utilise their own land."[1] That architects, builders, and others should welcome such a decision is not surprising, especially in view of the fact that, owing to constant migrations from rural to urban districts, due to agricultural depression and other causes, the extension of existing towns and the creation of new ones must become more and more essential every year, in order to provide adequate shelter for the increasing urban population. Thanks to the decision above referred to,[2] this work can now be accomplished with much greater freedom and infinitely less risk and anxiety than formerly—a condition of things which should ultimately lead to some improvement in the character of our buildings, and bring them by degrees more into conformity with recognised canons of art, both as regards construction and design. Architecture, which is said to be the most complex of the decorative arts,[3] being now undoubtedly freed from harassing restrictions of a legal character formerly believed (rightly or wrongly) to exist,[4] may again flourish in our own land, as it did in ancient Greece, when buildings were erected which (sublime even as ruins) in their pristine state satisfied the highest standard of artistic excellence. The present article does not pretend to be exhaustive of the subject to which it relates, but, as it does regard the easement of light from the standpoint of comparative jurisprudence,[5] it may

been a question of nuisance or no nuisance, and has merely readjusted the law in respect of the test of nuisance, which now is not how much light has been taken and is that enough materially to lessen the enjoyment and use of the house that its owner previously had, but how much light is left, and is that enough for the comfortable use and enjoyment of the house according to the ordinary requirements of mankind (per Farwell J. in *Higgins* v. *Betts*, (1905) 2 Ch. at p. 215).

[1] Per Earl of Halsbury L.C. in *Colls* v. *Home and Colonial Stores Limited, supra.* In the previous case of *Bagram* v. *Kettranath Karformah, supra,* Peacock C.J. expressed himself in similar terms, as did also Lord Hardwicke L.C. in *Fishmongers' Company* v. *East India Company,* (1752) 1 Dick. at p. 165.

[2] *I.e.* in *Colls* v. *Home and Colonial Stores Limited, supra.*

[3] *How to judge Architecture,* by Russell Sturgis, 4th ed. p. 13, note 1.

[4] According to the Earl of Halsbury L.C. in *Colls* v. *Home and Colonial Stores Limited,* (1904) A.C. at p. 182, there were authorities for the proposition that a person was entitled to have preserved to him *all* light once legally acquired by him, and that any interference therewith afforded a ground of action.

[5] The law of servitudes is said to be as ancient as that of property, of which servitudes are a modification, and the laws of every country must necessarily recognise servitudes (per Norman J. in *Bagram* v. *Kettranath Karformah,* (1869) 3 Bengal L.R. O.J.C. at p. 37). From the very earliest times the ancient common law of England recognised rights to the access of light and air through windows (*see* Cases in Year Books in Michaelmas Term, 7 Ed. III. and 14 Henry IV.). Most of the European Codes Civil (and some others) have been consulted for the purposes of this

possibly, at the present juncture, be invested with some interest, in the opinion of readers of this Journal.

It is proposed to divide these Notes under the following heads—namely: (1) The Nature of the Easement of Light; (2) The Acquisition of the Easement of Light; (3) The Extent of the Easement of Light; and (4) The Extinction of the Easement of Light.

(1) **The Nature of the Easement of Light.**—Both light and air, which are bestowed for the common benefit of mankind,[1] are *publici juris*—that is to say, while it is the common right of all to enjoy them, they are the exclusive property of none.[2] However, so far as light is concerned, the *natural* right, according to English law, is merely to receive *vertically* the light appertaining to the situation of a tenement,[3] and does not extend

article. The Codes of France and Belgium are, it may be useful to mention, identical in their terms, so far as the servitude of light is concerned. In all the Codes, the Roman law term *servitus* (servitude) is adopted to express what in English law is designated by the word "easement." In Victoria, Queensland, and Tasmania, the English law of prescription as to ancient lights, which was in force at the time of the passing of the Act of 9 Geo. IV. c. 83, is made part of the law of those colonies by virtue of s. 24 of that statute (see *Delohery* v. *Permanent Trustee Company of N.S.W.*, 1904, 1 Commonwealth L.R. 283); while the English Prescription Act, 1832 (2 & 3 Will. IV. c. 71), is in force in South Australia (see *White* v. *McLean*, 1890, 24 S.A.R. 17), New Zealand (see *New Zealand Loan and Mercantile Company* v. *Wellington*, 1890, 9 N.Z. L.R. 10), and New Brunswick (see *Ring* v. *Pugsley*, 1878, 18 New Br. 303). On the other hand, in New South Wales, by the Ancient Lights Declaratory Act (No. 16 of 1904), the enjoyment of the access or use of light to a building for any period, or any presumption of a lost grant based on such enjoyment, shall not, it is provided, alone create a right to such access or use; and, in Western Australia, the Light and Air Act (No. 29 of 1901) enacts that no rights of access of light and air are to be acquired by prescription, grant, or otherwise, unless by grant which (*a*) must be made by deed duly executed and registered, and (*b*) shall provide that the benefit thereof shall endure for a term of twenty-one years (s. 1), and that no tenement shall become servient to any other in respect of the access of either light or air (s. 2). This last-named Act applies to Crown lands within the Colony. The Indian Easements Act, 1882, already referred to, largely codifies the law of easements prevailing in British India, while in Mauritius the French Civil Code (adopted under the name of Code Napoleon as far back as April 21, 1808) would seem to apply to and regulate easements in that colony. In the United States of America the easement of light recognised by the English law has, as will presently be seen, to all intents and purposes been rejected.

[1] Per Parke B. in *Embrey* v. *Owen*, (1851) 6 Exch. at p. 372.

[2] Per Earl of Halsbury L.C. in *Colls* v. *Home and Colonial Stores Limited*, (1904) A.C. pp. 182, 183.

[3] *Corbett* v. *Hill*, (1870) L.R. 9 Eq. 671; Innes's *Digest of the Law of Easements*, 7th ed. p. 74. Though the right to vertical light is in accordance with the principle of law embodied in the maxim *cujus est solum ejus est usque ad altum, semble* it is no *trespass* to pass over another's land in a balloon, and it is doubtful whether doing so gives rise to any cause of action (see per Lord Ellenborough in *Pickering* v. *Rudd*, 1815, 4 Camp. at p. 221). In *Bagram* v. *Khettranath Karformah*, (1869) 3 Bengal L.R. O.J.C. at p. 43, Norman J. thus expresses himself on this subject: "To interfere with the column of *air* superincumbent upon land is not a trespass. Lord

to *lateral* light,[1] though the free passage thereof to a building can be acquired as an easement in various ways presently to be mentioned.[2] The easement of light, as distinguished from the natural right to light, is essentially a product of civilisation[3]—that is to say, it cannot be acquired in respect of land in its *natural* state, but only in respect of land built upon;[4] and it is in no sense a right in gross,[5] being, on the contrary, always appurtenant to some building,[6] in respect of which, however, an easement can be gained by prescription, even though the building be unoccupied[7] and unfinished.[8] Still, it is somewhat of a solecism to attribute an easement to things such as buildings,[9] seeing that every easement must, after all, belong to and

Ellenborough justly ridicules the notion that travellers in a balloon could be deemed trespassers on the property of those over whose land the balloon might pass." So far as *light* is concerned, it is obvious that the obstruction caused by the passage of a balloon over land, being merely of a *temporary* character, could not *per se* afford ground of action to a reversioner (*Jackson* v. *Pesked*, 1813, 1 M. & I. 234, but see *The Metropolitan Association* v. *Petch*, 1858, 27 L.J.C.P. 330), and would not amount to an "interruption" of enjoyment of light within s. 4 of Prescription Act, 1832 (see *Presland* v. *Bingham*, 1889, 41 Ch. D. 268).

[1] Innes's *Law of Easements*, 7th ed. p. 75; and see *Bonner* v. *Great Western Railway Company*, (1883) 24 Ch. D. 1.

[2] See *post*, pp. 308 *et seq.*

[3] Roscoe's *Digest of the Law relating to the Easement of Light*, 4th ed. p. 3.

[4] *Roberts* v. *Macord*, (1832) 1 Moo. & Rob. 230; *Potts* v. *Smith*, (1868) L.R. 6 Eq. 311; *Harris* v. *De Pinna*, (1886) 33 Ch. Div. 238; *Clifford* v. *Holt*, (1899) 1 Ch. 698; *Bonner* v. *Great Western Railway Company*, *supra*. See also Indian Easements Act, 1882, s. 17.

[5] Per Bowen L.J. in *Scott* v. *Pape*, (1886) 31 Ch. Div. at p. 571. There is, *semble*, no such right known to the English law as an easement in gross claimable by prescription (see Goddard on *Easements*, 6th ed. p. 10; *Shuttleworth* v. *Le Fleming*, [1865] 19 C.B. N.S. 687; *Mounsey* v. *Ismay*, [1865] 34 L.J. Ex. 52; *Ramsgate Corporation* v. *Debling and others*, [1906] 22 Times L.R. 369, S.C. 1906, 70 J.P. 132; *Ackroyd* v. *Smith*, [1850] 10 C.B. 164; Gale on *Easements*, 7th ed. p. 11; Wolstenholme's *Conveyancing and Settled Land Acts*, 9th ed. p. 127; Pollock and Maitland's *History of English Law*, vol. ii. p. 144).

[6] Per Bowen L.J. in *Scott* v. *Pape*, (1886) 31 Ch. Div. at p. 571; per Lord Coleridge C.J. in *Hawkins* v. *Rutter*, (1892) 1 Q.B. 671. The English Prescription Act, 1832 (2 & 3 Will. IV. c. 71), gives an absolute and indefeasible right to light, after twenty years' enjoyment, only when it has actually been enjoyed in respect of "*any dwelling house, workshop*" or "*other building*" *ejusdem generis* (see *Harris* v. *De Pinna*, 1886, 33 Ch. Div. 238). Though, as stated above, the easement of light is always appurtenant to some building, it is to be noticed that the easement of light acquired by prescription is to an "*ancient light*," and not to an "*ancient window*" (per Fry J. in *National Provincial Plate Glass Insurance Company* v. *Prudential Insurance Company*, 1877, 6 Ch. D. 757, 765), and extends therefore to a new building, occupying the site and area of an old building which possessed ancient lights (*ibid.*, and see *Aynsley* v. *Glover*, 1875, L.R. 10 Ch. 283; *Newson* v. *Pender*, 1884, 27 Ch. D. 43).

[7] *Courtauld* v. *Lee*, (1869) L.R. 4 Ex. 126; per Stirling J. in *Smith* v. *Baxter*, (1900) 2 Ch. at p. 143.

[8] *Collis* v. *Laugher*, (1894) 3 Ch. 659.

[9] Hunter's *Roman Law*, 4th ed. p. 396.

be enjoyed, and, if necessary, be enforced, by a person,[1] who, it may be mentioned, cannot acquire an easement over his own land, and, therefore, cannot have any accruing right to light, so long as there is unity of possession of the dominant and servient tenements.[2]

The easement of light recognised by English law, belongs to that class of easements which are *continuous*[3] in character, but can hardly be regarded as being *apparent*[4] (though it certainly does usually possess external signs of its existence, in the shape of windows and other openings), seeing that it consists not, as was formerly supposed by certain jurists to be the case, of a mere *affirmative* right of property, but of a right curtailing the proprietary right of a neighbour to build as he pleases,[5] which right is often, in consequence,

[1] Joint owners of property form, in respect thereof, one person (Innes's *Digest of the Law of Easements*, 7th ed. p. 7). Variable indeterminate bodies, such as the inhabitants of a village or parishioners of a parish, cannot acquire an easement (see *Constable* v. *Nicholson*, 1863, 32 L.J. C.P. 240; per Martin B. in *Mounsey* v. *Ismay*, 1865, 34 L.J. Ex. at p. 55).

[2] *Ladyman* v. *Grave*, (1871) L.R. 6 Ch. App. 763; *Cooper* v. *Barber*, (1810) 3 Taunt 99; *Harbridge* v. *Warwick*, (1849) 18 L.J. Ex. 245; and see *post*.

[3] Continuous servitudes or easements are those which are or may be continued without the immediate act of man being necessary to them (Codes Civil, Fr. and Bel. 688). They may be said to act and be enjoyed automatically, as light and air are required by mere occupancy, not by user (per Littledale J. in *Moore v. Rawson*, 1824, 3 B. &. C. at p. 339; per Bowen L. J. in *Birmingham, Dudley, and District Banking Company* v. *Ross*, 1888, 38 Ch. D. at p. 313). It was the framers of the Code Napoleon (who had to make one law for all France) who were the first (amongst modern jurists, at least) to divide servitudes into classes—those that were continuous and those that were discontinuous, and those that were apparent and non-apparent; and, though the difference between them must always have existed, no trace of such classes can, it seems, be found in the old French law (per Lord Blackburn in *Dalton* v. *Angus*, 1881, L.R. 6 App. Cas. at p. 821). This classification, which was evidently derived (as will be seen presently) from the Roman law, has been reproduced in the Indian Easements Act (V. of 1882, as amended by Act XII. of 1891), s. 5, and is also recognised in Scotland. As a proof of the admirable manner in which the framers of the Code Napoleon did their work, it may be mentioned that "in spite of revolutions in Paris, the fundamental provisions of the Code Napoleon have stood to a great extent unaltered since its publication in 1804, and before 1900 the Code had become invested with a sort of legal sanctity which secured it against sudden sweeping change" (*Law and Opinion in England in Nineteenth Century*, by A. V. Dicey, K.C., p. 7).

[4] The French Code states that apparent servitudes are those which are indicated by exterior works, such as a door, a window, or a water-conduit, and that non-apparent servitudes are those which have no exterior signs of existence, as, for example, the right of prohibiting another from building upon a certain spot, or from building above a given height (art. 689), which is also treated by the Indian Easements Act, 1882, as an example of a non-apparent easement (s. 5). The easement of light appears to have been regarded in the Roman law as *apparent* whenever there was a window or other opening entitled to the passage of light thereto (see *post*).

[5] See Goddard on *Easements*, 6th ed. p. 53; Gale on *Easements*, 7th ed. p. 19; but see Innes's *Digest of the Law of Easements*, 7th ed. pp. 4, 5. Formerly, the right

described as a *negative*[1] easement, so as to distinguish it from an *affirmative* easement, which entitles the dominant owner to directly invade the right of the servient owner by doing some act inconsistent therewith.

The Roman law[2] recognised several servitudes connected with

of a house-owner to light gained by prescription, whether before or after the Prescription Act, was regarded by one school of jurists as being a mere right of property; while, according to the other, the right was regarded not as a right of property in light, or, as it is sometimes inaccurately stated, in light and air, but as a *negative* easement, being a right to prevent some landowner from using his land so as to constitute a nuisance to the owner or occupier of a house upon adjoining land (per Vaughan Williams L.J. in *Kine* v. *Jolly*, 1905, 1 Ch. at p. 487). The view maintained by the latter school was adopted by the H.L. in *Colls* v. *Home and Colonial Stores Limited*, *supra*, and must now be treated as law.

[1] See per Lord Macnaghten in *Colls* v. *Home and Colonial Stores Limited*, (1905) A.C. at pp. 185, 186; per Parke B. in *Harbridge* v. *Warwick*, (1849) 18 L.J. Ex. at p. 247; Innes's *Digest of the Law relating to Easements*, 7th ed. pp. 3 *et seq.* Bowen L.J. in *Birmingham, Dudley, and District Banking Company* v. *Ross*, (1888) 38 Ch. D. at p. 313; and James L.J. in *Kelk* v. *Pearson*, (1871) L.R. 6 Ch. App. at p. 811, treat the easement of light as *negative* in character, and it is so regarded in Scotland (Green's *Encyclopædia of the Scots Law*, vol. viii. p. 122, tit. "Light, Servitude of"; Erskine's *Principles of the Law of Scotland*, 20th ed. p. 206; Stair, ii. 7. 5. 9; Moore's *Lectures on the Law of Scotland*, vol. i. p. 595; *Metcalfe* v. *Purdon*, 1902, 4 F. 507; *Dundas and others* v. *Blair*, 1886, 13 R. 759). It may, however, well be doubted whether there is any real scientific foundation for the distinction between a positive and a negative easement (Austin's *Jurisprudence*, 5th ed. vol. ii. p. 810).

[2] A portion of the Roman law of servitudes has evidently found its way into the English law of easements (see per Lord Blackburn in *Dalton* v. *Angus*, 1881, L.R. 6 App. Cas. at p. 823; Peacock's *Law relating to Easements in British India*, p. 40), just as many maxims of the common law are borrowed from the civil law and are still quoted in the language of the civil law (per Best C.J. in *Gifford* v. *Lord Yarborough*, 1828, 5 Bing. at p. 167). The laws of Edward the Confessor, together with all the Norman customs which followed, would not have been sufficient to form a system of law adequate to the then state of society, and English courts of justice and jurists were therefore obliged to adopt such rules of the Digest as were not inconsistent with English principles of jurisprudence (*ibid.*, and see Pollock and Maitland's *History of English Law*, vol. i. pp. 186, 187). As regards the extent to which Roman law is now recognised in England, it is to be noticed that "it forms no rule binding in itself upon the subjects of these realms; but, in deciding a case upon principle, where no direct authority can be cited from our books, it affords no small evidence of the soundness of the conclusion at which we have arrived, if it proves to be supported by that law, the fruit of the researches of the most learned men, the collective wisdom of ages, and the groundwork of the municipal law of most of the countries in Europe" (per Tindal C.J. in *Acton* v. *Blundell*, 1843, 12 M. & W. at p. 353). In a work of fiction by an eminent statesman, it is stated that "the Roman law is a law foreign to our manners, and therefore disadvantageous" (*Contarini Fleming*, ch. xx.). The term Roman law comprises the fabric of law which originated in the Twelve Tables, was gradually developed through succeeding centuries, and took codified form under the Emperor Justinian in the sixth century after Christ (see Peacock's *Law relating to Easements in British India*, p. 37). In reference to this body of law the late Lord Acton wrote as follows: "Afterwards came Roman law in which the State is the first thing; law comes downward from the Sovereign, does not grow upwards from the people, as in the Teutonic State. This

light.[1] Each of these was, in its nature, an urban prædial servitude (*jus urbanorum prædiorum*),[2] and, like every prædial servitude, was indivisible[3] and implied the existence of two immovable subjects, the one enjoying the right (the dominant tenement) and the other sustaining the burden (called the servient tenement).[4] Moreover, such a servitude was always connected with the ownership of the original dominant tenement, and could not be transferred to the owner of any other land, so as to be attached thereto,[5] being restricted in its enjoyment to the land to which it was originally attached.[6] Then, again, it was, from its very nature, *continuous*,[7] or, in other words, capable of continuous enjoyment, without active effort or user by the dominant owner and not merely *intermittent* in character, like, for instance, a right of way, which, even though it may always be capable of exercise, in point of fact is not always being actively used or enjoyed, and which, by non-active user for a lengthened period of time, may therefore be extinguished altogether.[8]

difference is not, however, in the original principles of the two legislations, but in this that the Roman law which began to be studied was that of a finished State, of a mature, yea, an old people, of an Empire that had developed the most extremist absolutism on the ruins of the *Populus*. The political ideas of the Theodosian or Justinian Code are those of a Society ground to atoms by the wheel of revolution, consisting no longer of parts, but like sand or water in which all life and all power are the Sovereign" (*Lord Acton and his Circle*, Letter 101, pp. 232, 233).

[1] A servitude (*servitus*) was a single definite right over land, enjoyed in opposition to the owner, while a usufruct (*usufructus*) involved the entire use and enjoyment of land by another as against the owner, for a limited period of time, or for life, and was a sort of indefinite servitude, the possession of which could not, however, destroy the substance of the property over which it existed (Hunter's *Roman Law*, 4th ed. p. 396).

[2] Prædial servitudes were rural or urban, and were so called not with reference to the place in which the property was situated, but to the nature of the property or to the purpose or use for which they were enjoyed (Burge, *Colonial Law*, vol. iii. pp. 400, 401). The former affected the soil itself, and the latter the surface—*i.e.* what was raised upon it (D. viii. 1. 3). Either of these could exist wholly in the country or wholly in the town (D. viii. 2. 2). *Rural* prædial servitudes were, almost without exception, *positive*, while *urban* prædial servitudes were mostly *negative* in character (Hunter's *Roman Law*, 4th ed. pp. 414, 422, 423; and see *Institutes of Roman Law* by Gaius, translated by Poste, 4th ed. p. 129).

[3] That is to say, had to be enjoyed wholly or not at all (Dig. viii. 1. 11). Therefore, on the death of the owner of a prædial servitude, each of his several heirs had the right to enjoy the servitude in its entirety (Dig. viii. 1. 17).

[4] Lord Mackenzie's *Roman Law*, 6th ed. p. 184; *Insts. Justin.* lib. ii. tit. iii.; Dig. vii. 4. 1; *Institutes of Roman Law*, by Gaius, translated by Poste, 4th ed. p. 131; *Vinnius on Inst.*, lib. ii. tit. iii. A servitude, in the case of houses, could only be imposed when the houses were contiguous, so that one could injure the other (Dig. viii. 11. 39). An owner could not have a servitude over his own land (Hunter's *Roman Law*, 4th ed. p. 421).

[5] Hunter's *Roman Law*, 4th ed. p. 413.

[6] *Ibid.*

[7] *I.e.* it did not involve the *jus faciendi*, or immediate act of man in the exercise or preservation thereof.

[8] See Hunter's *Roman Law*, 4th ed. p. 423. However, though active user was not

The principal servitudes relating to light recognised by the Roman law were the following, namely: (*a*) *Servitus luminum* or *jus luminis immitendi*[1]—*i.e.* the right of having a window in a neighbour's wall; (*b*) *jus officiendi luminibus vicini*—*i.e.* the re-acquired right of an owner to diminish the light of a neighbour; (*c*) *jus altius tollendi*[2]—*i.e.* the re-acquired right of an owner to increase the height of a structure; (*d*) *jus altius non tollendi*—*i.e.* the right of forbidding a neighbour to raise the height of his building; (*e*) *jus ne prospectui officiatur*—*i.e.* the right of preventing a neighbour from doing anything to diminish the uninterrupted view;[3] and (*f*) *jus ne luminibus officiatur*—*i.e.* the right to prevent any interference with the uninterrupted access of light to one's windows.[4]

Of the above-mentioned servitudes, the first three were *affirmative* (*i.e.* conferred on the dominant owner the right to do something which would otherwise involve a legal injury to the servient owner).[5] On the other hand, the last three were *negative* (*i.e.* restrained the owner of the servient tenement

necessary to the acquisition or maintenance of the right to light, such right being always gained by enjoyment could be lost by discontinuance of enjoyment (see Dig. viii. 2. 6; and see also *post*, *Moore* v. *Rawson*, 1824, 3 B. & C. 337).

[1] Dig. viii. 2. 4.

[2] *Ibid.* The owner of this *quasi*-servitude could, *semble*, raise his building at his pleasure, provided his neighbours did not thereby suffer more than they ought to do (Dig. viii. 2. 24. 25).

[3] No such easement is known to the English law. "For prospect, which is a matter only of delight, and not of necessity, no action lies for stopping thereof, and yet it is a great commendation of a house if it has a long and large prospect. . . . But the law does not give an action for such things of delight" (*Bland* v. *Mosely*, cited in *Aldred's Case*, 1620, 5 Co. Rep. 102; per Lord Blackburn in *Dalton* v. *Angus*, 1881, L.R. 6 App. Cas. at p. 823; see also *Smith* v. *Owen*, 1866, 35 L.J. Ch. 317; *Leech* v. *Schweder*, 1874, L.R. 9 Ch. App. 463). By agreement, however, the right of prospect can, even in England, be acquired (see *Western* v. *Macdermott*, 1866, L.R. 2 Ch. App. 72; Hudson and Inman on *The Law of Light and Air*, 2nd ed. p. 167), and a party may, by the terms of his grant, be stopped from afterwards obstructing the prospect which the grantee of the premises was to enjoy as an incident to his grant (*Piggot* v. *Stratton*, 1859, 1 Johns. Ch. R. 341). The Scotch law recognises the easement of prospect (Stair, ii. 7. 9; Bell's *Principles of the Laws of Scotland*, 1005, 1006; 2 Ersk. 9, § 10), but not always in combination with the servitude of light (Green's *Encyclopædia of Scots Law*, vol. viii. p. 122). So also does the Roman-Dutch law (Van Leeuwen's *Roman-Dutch Law*, translated by Kotze, vol. i. p. 291), and so do many of the Codes Civil (see *post*).

[4] This servitude, which is said to be most nearly identical with our modern easement of light (Roscoe's *Digest of the Law of Light*, 4th ed. p. 2), was regarded as beng somewhat equivocal in character, since it was doubtful whether it extended to lights subsequently acquired by new openings or whether it should be strictly confined to *old* ones (Dig. viii. 2. 22. 23). Sometimes, however, it was expressly limited to the preservation of lights in their original state (*ibid.*), and sometimes made, by apt words, to extend to new openings (*ibid.*). It could also be established to the profit or prejudice of a non-existing house (Dig. viii. 2. 23). Where the servitude *ne luminibus officiatur* did not exist, there was no right to open windows in a party wall (Dig. viii. 2. 40).

[5] *Institutes of Roman Law*, by Gaius, translated by Poste, p. 146.

from doing certain acts to the injury of the dominant owner, which otherwise would be legally permissible).[1] The three servitudes last referred to were, moreover, similar in character, though differing in their degree of extension. Thus the *servitus ne luminibus officiatur* was less extensive than the servitude *ne prospectui officiatur*, which forbade any obstruction of view, even though it did not diminish light,[2] but was wider than the servitude *altius non tollendi*, because light may be interrupted by other causes than buildings (*e.g.* by trees).[3] As regards the servitudes (*b*) and (*c*), above mentioned, some doubt prevails as to their character—namely, whether they were really servitudes at all, or merely modes of extinguishing previously existing servitudes—and, *semble*, all that we can be quite sure of is that they were contraries of other servitudes constituted for the benefit of the owner of a thing that previously had been under some disadvantage.[4]

Besides the servitudes above referred to concerning light, a servitude could in Roman law be gained entitling the dominant owner to make projections from a building over a neighbour's land,[5] which might conceivably, in some cases at least, interfere with the access of light.

In the absence of any servitude restricting the owner's rights, any person was quite at liberty to raise the height of his house, even though he thereby obscured his neighbour's lights,[6] provided he left, between his own house and that of his neighbour, the space prescribed by law.[7]

The various Codes Civil now in force embody, to a great extent at all events, the provisions of the Roman Law in regard to servitudes, and do

[1] *Institutes of Roman Law*, by Gaius, translated by Poste, p. 146.

[2] Dig. viii. 2. 7. 12. 15.

[3] *Institutes of Roman Law*, by Gaius, translated by Poste, p. 146; Dig. viii. 2. 17.

[4] See Sandars's *Institutes of Justinian*, 9th ed. p. 121; Theophilus's *Paraphrases of Institutes of Justinian*, vol. i. p. 155; see also Dig. viii. 2. 2; Bell's *Principles of the Laws of Scotland*, 10th ed. par. 1008.

[5] Dig. viii. 2. 2. This servitude was called *jus proficiendi*, and enabled part of a building to be projected towards the adjoining house without resting on the latter (Burge's *Colonial Law*, vol. iii. p. 402). In England, where one of two adjoining houses is built, so as to protrude into or over the other (as in the case of buildings with cornices), the protrusion may by grant, reservation, or otherwise, be as of right (Gale on *Easements*, 7th ed. p. 286, note [*a*]; and see *Francis* v. *Hayward*, 1882, 22 Ch. Div. 177; *Laybourn* v. *Gridley*, 1892, 2 Ch. 53; *Corbet* v. *Hill*, 1870, L.R. 9 Eq. 671). In this connection it is to be noticed that an action lies in England aganst an adjoining landowner for allowing his trees to overhang the boundary, to the damage of the plaintiff's crops (*Smith* v. *Giddy*, 1904, 2 K.B. 448), and that a landowner may, without notice, clip his neighbour's overhanging trees if he can do so wthout trespassing on his neighbour's land (*Lemmon* v. *Webb*, 1895, A.C. 1).

[6] See *Institutes of Roman Law*, by Gaius, translated by Poste, 4th ed. pp. 130, 131.

[7] Dig. viii. 2. 9. 14. It is stated in the Digest that he who wishes to injure the lights of his neighbour should always remember that he is obliged to preserve the form of the original construction of his building (Dig. viii. 2. 11).

not, as already stated,[1] distinguish, as does the English law, between easements and profits *à prendre*. Most, if not all, of the servitudes[2] concerning light, recognised by the Roman law (including that of prospect), will be found embodied in these Codes, and such servitudes, both as regards benefit and burden, are usually expressly stated to be attached to land or buildings.[3] They are also sometimes classified as "*rural*"[4] in character, and as being, in their nature, "*continuous*."[5] Some servitudes, however, are designated as *apparent*[6] (*i.e.* indicated by exterior works) and others as *non-apparent*[7] (*i.e.* without exterior sign of existence, as, for example, the servitude not to exceed a certain height in building); but the distinction between *positive* and *negative* servitudes, though evidently maintained, is not always actually defined in words.[8] All servitudes, whether they concern light or not, are, in the Codes Civil, generally regarded as being *indivisible* in character, both as regards benefit and burden.[9]

The Scotch law of servitudes is based substantially upon the Roman civil law.[10] It recognises the servitude *non officiendi luminibus vel prospectui*, and also that termed *altius non tollendi*; while the servitude *altius tollendi* is regarded less as a servitude than as an exception in favour of an individual from the operation of some such general servitude as that of *altius non tollendi*.[11]

The Indian Easements Act, 1882, which treats of easements generally, in ss. 4-7 thereof, defines an easement to be a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of certain other

[1] *Ante*, p. 298.

[2] A servitude is defined in some codes to be "a charge imposed upon a heritage for the use and benefit of a heritage belonging to another owner" (Codes Civil, Fr. and Bel. 637; Port. 2267; Ital. 531; Esp. 530; Holl. 721).

[3] Codes Civil, Fr. and Bel. 637, 688; Port. 2267, 2268; Esp. 534.

[4] *I.e.* for the use of *buildings*, whether situated in town or country (see Codes Civil, Fr. and Bel. 687).

[5] Codes Civil, Fr. and Bel. 688; Port. 2270; Esp. 532; Ital. 617, 618; Holl. 724, 725. Owing to their automatic character, continuous servitudes are sometimes called *passive*, in order to distinguish them from continuable servitudes, which, as they depend for their existence on the active user of man, are in some Codes termed *active* servitudes (Codes Civil, Fr. and Bel. 665).

[6] Codes Civil, Fr. and Bel. 688; Port. 2270; Esp. 532; Ital. 617, 618; Holl. 724, 725.

[7] *Ibid.*

[8] The Spanish Code Civil, however, contains such a definition in art. 533.

[9] Codes Civil, Fr. & Bel. 700; Ital, 644; Esp. 535; Holl. 741; Port. 2269; Grisons, 752.

[10] Ersk. 2. 9.

[11] Bell's *Principles of the Laws of Scotland*, 10th ed. pars. 1005, 1007, and 1008; Green's *Encyclopædia of Scots Law*, vol. viii. pp. 122, 123; and see *Banks & Co.* v. *Walker*, (1874) 1 R. 981.

land not his own.[1] It also classifies easements as continuous and discontinuous, apparent and non-apparent.[2] With regard to the easement of light, it is treated as being continuous,[3] and restrictive of the exclusive right of every owner of immovable property, to enjoy, use, and dispose of the same as he pleases.[4] It is also regarded as a prescriptive right,[5] because capable of being acquired by prescription, under s. 15 of the Act, in respect of any building, though not in respect of an open space of ground.[6]

In the United States of America the easement of light which obtains in England is not generally recognised, being regarded as an anomaly in the law.[7] It could not, it has been stated, be adopted in the growing cities and villages of the great Republic without working the most mischievous consequences.[8] The enormous height of American buildings, which has caused them to be nicknamed "sky-scrapers," is evidently one consequence of there being no easement of light to check their upward growth.[9] It is believed that not any of the States comprised by the United States of America have adopted the English easement of light.[10] At all events, it does not prevail in the States of New York, Massachusetts, Maine, Connecticut, Pennsylvania, South Carolina, Alabama, and Maryland,[11] though its retention in Illinois, New Jersey, and Louisiana has been asserted.[12]

(2) **The Acquisition of the Easement of Light.**—In what way precisely the right to enjoy the unobstructed access of light from adjoining land may be acquired in England is said to be a question of admitted nicety,[13] though, as will presently be seen,[14] in cases within the English Prescription Act, 1832 (2 & 3 Will. IV. c. 71), the conditions necessary for gaining the easement are clearly specified. Without entering into detail on such a subject, it may be as well to state that though most cases involving the easement of light are now governed by the Prescription Act,[15] a right to

[1] S. 4, which goes on to define dominant and servient heritage and owners.
[2] S. 5. [3] *Ibid.* [4] S. 7. [5] S. 17. [6] *Ibid.*
[7] Per Curiam in *Parker* v. *Foote*, (1838) 19 Wendell at p. 318.
[8] *Ibid.*
[9] *Two Centuries' Growth of American Law*, by members of the Faculty of the Yale Law School, p. 60. When the Federal City of Washington was being constructed, there was a regulation that the houses of the citizens should be thirty-five or forty-five feet high (Sir T. Martin's *Life of Lord Lyndhurst*, p. 58).
[10] *Ibid.*, and per Curiam in *Parker* v. *Foote*, *supra*.
[11] Washburne on *Easements*, 2nd ed. p. 583.
[12] *Ibid.*
[13] Per Patterson J. in *Blanchard* v. *Bridges*, 1835, 4 Ad. & E. at p. 191.
[14] See *post*, pp. 310 *et seq.*
[15] The Prescription Act has not, *semble*, taken away any of the modes of claiming easements which previously existed (per Mellish L.J. in *Aynsley* v. *Glover*, 1875, L.R. 10 Ch. App. at p. 283; *Kelk* v. *Pearson*, 1871, L.R. 6 Ch. 808; *The City of London Brewery Company* v. *Tennant*, 1874, L.R. 9 Ch. App. 212; Roscoe's *Digest of the Law relating to Light*, 4th ed. p. 11), and it is still possible, and not unusual, to claim in the pleadings a right to light alternatively under the Prescription Act and at common law (see Herbert's *History of the Law of Prescription*, p. 19; *Bailey* v.

the access and use of light may still be acquired by prescription at common law,[1] and also in other ways irrespective of the Act.[2] As regards the

Stevens, 1862, 31 L.J. C.P. 226; *Aynsley* v. *Glover*, 1875, L.R. 10 Ch. 283; *Palmer* v. *Guadagni*, 1906, W. Notes, 165).

[1] The length of time required at common law to establish a right to access of light was always a somewhat uncertain quantity. A reasonable length of time was sometimes accepted as evidence of immemorial usage (see *Aynsley* v. *Glover*, 1875, L.R. 10 Ch. 283). Eventually, however, in order to avoid the difficulty of proof of immemorial usage, the judges fell into the habit of directing juries to presume a lost grant, *or* covenant not to interrupt the free access of light, after the period of twenty years' enjoyment, by analogy to the Statute of Limitations (see per Parke B. in *Bright* v. *Walker*, 1834, 1 C.M. & R. at p. 217; per Littledale J. in *Moore* v. *Rawson*, 1824, 3 B. & C. at p. 340; *Angus* v. *Dalton*, 1881, L.R. 6 App. Cas. 740, 812; *Penwarden* v. *Ching*, 1829, Moo. & M. 400), though opinions differed as to whether such a right could lie in grant as well as in covenant (see per Bowen L.J. in *Birmingham, Dudley, and District Banking Company* v. *Ross*, 1888, 38 Ch. D. at p. 313; Roscoe's *Digest of the Law relating to the Easement of Light*, 4th ed. p. 18), and as to whether the judges, in thus shortening the period of prescription, without the authority of the Legislature, were not guilty of a great judicial usurpation (per Lord Blackburn in *Dalton* v. *Angus*, 1881, 6 App. Cas. at p. 812). The Prescription Act has, in cases to which it applies, made the right to access of light matter *juris positivi*, which does not require, and therefore ought not to be rested on, any presumption of grant or fiction of a licence having been obtained from the adjoining proprietor (see per Lord Westbury L.C. in *Tapling* v. *Jones*, 1865, 34 L.J. C.P. at p. 344).

[2] An easement in land is, *semble*, an interest in land within s. 4, Stat. Frauds (see *McManus* v. *Cooke*, *infra*), which requires written evidence of any contract concerning such an interest. An easement by express agreement, however, can only be created by deed of grant (Gale on *Easements*, 7th ed. p. 25; *Hewlins* v. *Shipman*, 1826, 5 B. & C. 221; *Wood* v. *Leadbitter*, 1845, 13 M. & W. 838), though, where there is only an agreement in writing not under seal and therefore incapable of conferring an interest in the nature of an easement, it may yet give a right of action as between the parties for any breach thereof (see Goddard on *Easements* 6th ed. p. 444; *Wood* v. *Leadbitter*, *supra*). By virtue of the Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 62 (i.), easements may now be granted by way of use, though this could not formerly have been done, while by s. 6, sub-s. 2, a conveyance of land built upon operates to convey all lights appertaining thereto, but not to grant *de novo* a right to light (*Beddington* v. *Atlee*, 1887, 35 Ch. Div. 317). In this connection it may be mentioned that by the Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 3 (i.), a tenant for life may sell the settled land or any part thereof "or any easement, right, or privilege of any kind over or in relation to the same," and by s. 4 (7) an enfranchisement of copyholds may be made with or without a regrant of any easement or privilege theretofore appendant or appurtenant to or held or enjoyed with the land enfranchised, or reputed so to be. The Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 5, provides that, on an exchange or partition of lands any easement, right, or privilege of any kind may be reserved, or may be granted over or in relation to the settled land or any part thereof, or other land, or an easement, right, or privilege of any kind may be given or taken in exchange or on partition for land or for any other easement, right, or privilege of any kind. The principle that a grantor shall not derogate from his grant has often successfully been invoked by the claimant of an easement over land retained by the grantor (*Frederick Betts Limited* v. *Pickford*, 1906, 2 Ch. 87; *Tenant* v. *Goldwin*, 1704, 2 Raym. at p. 1093; *Booth* v. *Alcock*, 1873, L.R. 8 Ch. 663, and see the Scotch case of *Heron* v. *Gray*, 1880, 8 R. 155). Even the

provisions of the Prescription Act, 1832, which relate to light, they are mainly contained in ss. 3, 4, 5, and 6 thereof. The effect of these enactments is, briefly, as follows: to render unnecessary proof of enjoyment "from time immemorial,"[1] and to confer an absolute and indefeasible right to access of light, to and for any dwelling-house, workshop, or other building,[2] after an actual enjoyment therewith[3] for the full period of twenty years,[4] without

devisees under a will may be respectively burdened or benefited by *quasi*-easements of an apparent and continuous character previously recognised and used by their testator (*Pearson* v. *Spencer*, 1863, 3 B. & S. 761; *Barnes* v. *Loach*, 1879, 48 L.J. Q.B. 756; *Milner's Safe Co. Ltd.* v. *Great Northern & City Railway Co.*, 1906, W. Notes, 163, 164); and it may be useful to state that upon a severance of tenements, easements as of necessity, or in their nature continuous, will pass by *implication* of law without any words of grant (*Watts* v. *Kelson*, 1871, 40 L.J. Ch. 126; *Compton* v. *Richards*, 1814, 1 Price 27). By acquiescence of the owner of the adjoining tenement clearly indicated by external act, a right to light may be acquired even for a new building (see *Cotching* v. *Bassett*, 1862, 32 L.J. Ch. 286; *Fisher* v. *Moon*, 1865, 11 L.T. N.S. 623; and see *Blanchard* v. *Bridges*, 1835, 4 Ad. & E. 176).

[1] This was considered to include and denote the whole period of time from the reign of Richard I.

[2] Such other building must be *ejusdem generis* with dwelling-houses and workshops (*Clifford* v. *Holt*, 1899, 1 Ch. 698; *Harris* v. *De Pinna*, 1886, 33 Ch. D. 238).

[3] The enjoyment need not, however, be, as is necessary in the case of other easements, as of *right* (per Pollock C.B. in *Frewen* v. *Phillips*, 1861, 30 L.J. C.P. at p. 357), nor need it be an actual personal enjoyment (see *Courtauld* v. *Lee*, 1869, L.R. 4 Ex. 126); but it must be such an enjoyment of light as has reached the building, in respect of which the easement is claimed, through the same definite channel for the statutory period (*Harris* v. *De Pinna*, *supra*).

[4] This period of twenty years requires enjoyment during the first and last year thereof (see *Lord Battersea* v. *Commissioners of Sewers*, 1895, 2 Ch. 708), and must be calculated "next before some suit or action wherein the claim or matter to which such period may relate shall have been or shall be brought into question" (Prescription Act, 1832, s. 4; and see *Cooper and another* v. *Hubbuck*, 1862, 31 L.J. C.P. 323). Until some such action has been brought, the easement of light is not gained (however lengthy the enjoyment may have been), for, till then, the enjoyment is liable to an interruption for one year, which may be fatal to the claim (see *Parker* v. *Mitchell*, 1840, 11 A. & E. 788); while, on the other hand, once there has been enjoyment for the statutory period, *before some action in which the fact of such enjoyment has come in question* (without even being determined), no subsequent interruption will defeat the claim, and, in any action that may afterwards be brought, the enjoyment need only be proved to have existed for the necessary period *before* the *original* action in which the easement was in contest (*Beytagh* v. *Cassidy*, 1867, Ex. Ir. 16 W.R. 403). It would seem that a friendly suit, brought after twenty years' enjoyment, would operate to make a right to light indefeasible and independent of interruptions not amounting to abandonment (Hudson and Inman's *Law of Light and Air*, 2nd ed. p. 50). Where the right to access of light for twenty years "*before some action*" cannot be established, the claim to light should be based on one or other of the grounds which existed before the Prescription Act, and which that Act has not abolished (per Mellish L.J. in *Aynsley* v. *Glover*, 1875, 44 L.J. Ch. at p. 524). So long as the dominant and servient tenements are in the possession and occupation of the same person, the acquisition of the right to light is suspended (*Ladyman* v. *Grave*, 1871, L.R. 6 Ch. 763); an easement of light (though no other easement) can be

interruption,[1] any local usage or custom to the contrary notwithstanding,[2] unless it shall appear that the same was enjoyed by some consent or agreement, expressly made or given for that purpose by deed or writing.[3] In cases within the Act, no prescription is made in support of any claim for any less period of time or number of years than for such period or number mentioned in the Act as may be applicable to the case and to the nature of the claim.[4] In case of light, the disability of the servient owner[5] does not prevent the acquisition of the right after twenty years' enjoyment thereof, as such right thereby becomes absolute and indefeasible.[6]

The Roman law did not originally permit the acquisition of a servitude

gained for a term of years under the Act not only against a tenant, during the continuance of his lease, but also against the landlord or reversioner after its expiration (see *Kilgour* v. *Gaddes*, 1904, 1 K.B. at p. 466; *Mitchell* v. *Cantrill*, 1887, 37 Ch. D. 56; *Wheaton* v. *Maple*, 1893, 3 Ch. 48, 55; *Frewen* v. *Phillips*, 1861, 30 L.J. C.P. 356; *Simper* v. *Foley*, 1862, 2 Johns & H. 555; *Ladyman* v. *Grave*, *supra*, and see also the recent case of *Fear* v. *Morgan*, 1906, 2 Ch. 406 C.A., where it was held that the proposition established by the cases last cited still holds good, notwithstanding *Colls* v. *Home and Colonial Stores Ltd.*, 1904, A.C. 179). No right to light against the Crown can be acquired under the Prescription Act (*Perry* v. *Eames*, 1891, 1 Ch. 658; *Wheaton* v. *Maple*, *supra*).

[1] The interruption, to be effectual, must be acquiesced in for one year, and it is immaterial whether the interruption be in the middle or be at the end of the twenty years (see s. 4, Prescription Act, 1832; *Flight* v. *Thomas*, 1841, 8 Cl. & F. 242; *The Plasterers' Company* v. *The Parish Clerks' Company*, 1851, 20 L.J. Ex. 362), but a mere discontinuance of user will not suffice (*Smith* v. *Baxter*, 1900, 2 Ch. 138; *Presland* v. *Bigham*, 1889, 41 Ch. D. 268).

[2] The custom of London, which authorised the raising of a building on an old foundation, so as to obstruct the passage of light through the ancient windows of a neighbour's house (see *Merchant Taylors' Company* v. *Truscott*, 1856, 25 L.J. Ex. 173; *Cooper* v. *Hubbuck*, 1862, 12 C.B. N.S. 456), and a similar custom formerly prevailing in York (*ibid.*), are therefore now abrogated. This custom permitted the building of a house to any height, even though it should obscure or totally destroy the light entering an adjoining house, provided the house heightened was on the exact foundations of an old building (see *Hughes* v. *Keme*, 1612, Yelv. R. 215). It is probable that similar customs to those of York and London grew up in other important towns of England (Roscoe's *Digest of the Law relating to the Easement of Light*, 4th ed. p. 5).

[3] As already stated, the common law prescription, unlike that introduced by the Prescription Act, presupposes the consent of the owner of the servient tenement (see *Tapling* v. *Jones*, *supra*). Under the Act, however, no easement is acquired thereunder by prescription if the enjoyment was by some consent or agreement expressly given or made for the purpose (*Bewley* v. *Atkinson*, 1879, 13 Ch. Div. 283; *Ruscoe* v. *Grounsell*, 1903, 89 L.T. 426; but see *The Plasterers' Company* v. *The Parish Clerks' Company*, 1851, 20 L.J. Ex. 362). Such an agreement, when entered into, does not, it may be mentioned, bind the purchaser of the servient tenement, without notice, nor is the existence of windows constructive notice of any such agreement (Roscoe's *Digest of the Law relating to the Easement of Light*, 4th ed. p. 15; *Allen* v. *Seckham*, 1878, 11 Ch. D. 790).

[4] S. 6.

[5] As where the servient owner is an infant, idiot, *non compos mentis*, *feme covert*, or tenant for life (see s. 7 of Prescription Act, 1832).

[6] S. 7.

by long enjoyment.[1] This mode of acquisition was, however, recognised in the time of Justinian, through the precise length of enjoyment necessary to gain a servitude was not prescribed.[2] Servitudes were, at first, created by agreements and stipulations, and also by testament.[3] The servitude of light (being, as already mentioned, an urban prædial servitude) could, moreover, if claimed *in solo Italico*, be constituted by the process termed *in jure cessio*,[4] which, however, was not applicable to servitudes over *provincial* lands.[5] Ultimately this last-named restriction disappeared,[6] while the older methods of constituting servitudes became obsolete.[7] Under the later Roman law servitudes were frequently constituted by adjudication,[8] and by enactment of the legislature.[9]

The provisions of the various Codes Civil governing the creation of servitudes do not call for detailed examination. In the case of the servitude relating to light, it can, when *apparent* in character, being in its nature continuous, be acquired, in France and Belgium,[10] by writing, or by a possession of thirty years; but when not apparent, it cannot be created except by writing[11]—even when immemorial possession can be estab-

[1] The usucapion of servitudes was expressly forbidden by the *lex Scribonia*. *Usucapio* was a title by prescription, which originally was available only to those who held the *Commercium* (Code 7. 39. 8; Dig. viii. v. 10), and was inapplicable to provincial lands. The *prætors*, on the analogy of *usucapio*, introduced a *præscriptio* applicable to provincial lands (Herbert's *Law of Prescription*, p. 2). Justinian, however, entirely altered the scope of *usucapio* and *præscriptio*, making the former applicable to movables, wherever situated, and the latter to all lands, wherever situated (*ibid.*).

[2] Hunter's *Roman Law*, 4th ed. p. 419. It has been doubted whether the passage in the Code (vii. 33. 12, and see also *ibid.* iii. 34. 2) refers to length of time for acquiring servitudes, or to the length of long user which would extinguish a servitude.

[3] Sandars's *Institutes of Justinian*, 9th ed. lib. ii. tit. iii. 4.

[4] Lord Mackenzie's *Roman Law*, 6th ed. p. 186, note 2.

[5] *Ibid.* Though the solemn process, or form, *in jure cessio*, was not available in the provinces, it has been stated that servitudes could be created there by convention (Gaius, 2, 31).

[6] Marezoll, 105.

[7] Lord Mackenzie's *Roman Law*, 6th ed. p. 186, note 2.

[8] Sandars's *Institutes of Justinian*, 9th ed. p. 124.

[9] See Lord Mackenzie's *Roman Law*, 6th ed. p. 186, note 2.

[10] Codes Civil, Fr. and Bel. art. 690.

[11] *Ibid.* art. 691. The prohibition not to build above a certain height is a non-apparent servitude (*ibid.* art. 689) and so also is the servitude of prospect, which, therefore, as held by the Douai Cours d'Appel in 1889, can only be established by written title. An appointment by the father of the family (*la destination du père de famille*), has by some Codes the effect of writing in regard to continuous and apparent servitudes (Codes Civil, Fr. and Bel. art. 692), though not (as decided by the Paris Cours d'Appel in 1890) in regard to the non-apparent servitudes *non altius tollendi et non ædificandi* (see Dalloz's Code Civil, 2nd ed. p. 171). This *destination du père de famille* is a legal fiction (per Norman J. in *Bagram* v. *Kettranath Karformah*, (1869) 3 Beng. L.R. O.J.C. at p. 42), which presumes that the original proprietor of several heritages has created a servitude in favour of one of them

lished.[1] The Italian law is in similar terms,[2] and also that of Spain,[3] though in the latter country the period of prescription is only twenty years.[4] The Portuguese Code Civil provides that continuous and apparent servitudes can be established by all the modes of acquisition recognised by that Code,[5] but that prescription shall not apply to continuous non-apparent servitudes, or to discontinuous servitudes, whether apparent or non-apparent.[6] The German Code Civil, 1900, does not contain any express provisions with regard to the creation of servitudes, but evidently requires them to be inscribed on the land book (*inscrite sur le livre foncier au profit du propriétaire*),[7] like other burdens imposed on land.[8] Under Dutch law, a negative servitude (such as that which prevents another from obscuring his neighbour's lights) can only be acquired by prescription, if there has intervened some act by which the person claiming the right has asserted it, and the opposing party has yielded to that.[9] Moreover, a mere grant or agreement is insufficient to create a servitude binding on innocent purchasers of the servient tenement, unless registered in the Registry of Deeds office;[10] and the Courts of the Cape of Good Hope have decided that registration is necessary to create or transfer a servitude.[11] In Japan, acquisitive prescription seems to be fully recognised in favour of a person who for twenty years or ten years (according to the distinction mentioned in the Code) has exercised any sort of proprietary right other than ownership, undisturbedly and openly, with the intention to have it for himself.[12] In Russia,[13] no servitude can be established by prescription or by usucapion.[14] The recognised modes of creation in that country are

when he has subjected the other to some burden for his own convenience. A somewhat similar principle of law applies in England, where the owner of an estate has been in the habit of using *quasi*-easements of apparent and continuous character over the one part for the benefit of the other part of his property (*Barnes* v. *Loach*, 1879, 48 L.J. Q.B. 756; and see *Pearson* v. *Spencer*, 1863, 3 B. & S. 761). See also Codes Civil, Port. 2274; Esp. 541; Fr. and Bel. 694; Ital. 633; Holl. 748; Grisons, 254.

[1] Codes Civil, Fr. and Bel. 691. The first *projet* of the Code Napoleon allowed, it seems, continuous servitudes, whether apparent or not, and discontinuous servitudes, if apparent, to be gained by title or by possession for thirty years (per Lord Blackburn in *Dalton* v. *Angus*, 1881, L.R. 6 App. Cas. at p. 821).

[2] Code Civil, Ital. arts. 629, 630.

[3] Code Civil, Esp. arts. 537, 539. The Spanish Code also provides that a defect of title in the constitution of a servitude, which cannot be acquired by prescription, can only be supplied either by some act of recognition on the part of the servient proprietor, or by a definitive judgment (art. 540).

[4] *Ibid.* art. 537. [5] Art. 2272. [6] Art. 2273. [7] Art. 1029. [8] Arts. 873 *et seq.*

[9] *Jordan and others* v. *Winkelman and others*, (1879) Buck p. 791; and see Morice's *English and Roman-Dutch Law*, p. 36.

[10] See Code Civil, Holl. art. 742; Morice's *English and Roman-Dutch Law*, p. 36.

[11] *Judd* v. *Fourie*, 3 E.D.C. 41.

[12] Japanese Code Civil, 1898 (Dr. Lonholm's translation), art. 163.

[13] The law relating to servitudes in that country seems to be regulated by the Imperial law of July 2, 1862, No. 252.

[14] *Éléments du Droit civil Russe*, by Ernest Lehr, p. 325.

by law, by judicial sentence, and by act of man—*i.e.* by contract or by unilateral declaration of will, like a testament.[1] In Egypt, servitudes are created by a document of title, and governed thereby and by local custom.[2] Whether, in that country, servitudes can also be acquired by prescription seems to be doubtful, though the usufruct of tributary lands can be acquired by five years' possession, provided the possessor cultivates the land.[3] In India, the acquisition of easements is mainly governed by the Indian Easements Act (No. V. of 1882) and the Indian Limitation Act (No. XV. of 1877), the English Prescription Act of 1832 (2 & 3 Will. IV. c. 71) having no force in British India,[4] though the English common law methods of acquiring easements, which existed previous to the Prescription Act, and which have already been referred to, are available.[5] The Code of Lower Canada provides that no servitude can be established without a title, even immemorial possession being insufficient for the purpose,[6] and that the want of such a title can only be supplied by an act of recognition proceeding from the proprietor of the land subject to the servitude.[7]

The law of Scotland regards the servitude of light as negative in character, and consequently as being incapable of possession and so of prescription, and therefore requires it to be constituted by deed of grant,[8] which must clearly indicate an intention to create a permanent right, though it need not be formal, and does not require publication in the record.[9] Mere acquiescence does not, in Scotland, give rise to the servitude of light,[10] though an express permission to open windows may imply such a servitude,[11] and it is very doubtful whether, in point of law, any amount of prescriptive use can extend the exercise of a servitude constituted by grant, beyond what is reasonably necessary to satisfy the terms of the grant.[12]

[1] *Ibid.* All servitudes created by written title must be inscribed on judicial registers, expressly kept for the purpose in various districts (*Éléments du Droit civil Russe*, by Ernest Lehr, p. 325).

[2] Code Civil, Egypt, art. 51 (mixed suits), art. 30 (native tribunals).

[3] *Ibid.* art. 105 (mixed suits).

[4] *Elliott* v. *Bhoobun Mohun Bonnergee*, (1873) 12 Beng. L.R. 406.

[5] *Ibid.*, and see Sir W. Rattigan's *Science of Jurisprudence*, p. 175. By the Indian Easements Act, 1882, an easement may be acquired in respect of a local custom, and such an easement is called a customary easement (s. 18).

[6] Art. 549.

[7] Art. 550; and see Spanish Code Civil, 540 (quoted *ante*), which is in somewhat similar terms.

[8] See Bell's *Principles of the Laws of Scotland*, 10th ed. p. 409, art. 994; Green's *Encyclopœdia of Scots Law*, vol. viii. tit. "Light, Servitude of," p. 122; Erskine's *Principles of the Law of Scotland*, 20th ed. p. 206; see *Metcalfe* v. *Purdon*, (1902) 4 F. 507; *Dundas and others* v. *Blair*, (1886) 13 R. 759.

[9] *Ibid.* See *Banks & Co.* v. *Walker* (1874), 1 R. 981.

[10] Bell's *Principles of the Laws of Scotland*, 10th ed. pp. 409–10; and see *Dundas* v. *Blair*, (1886) 13 R. 759.

[11] Bell's *Principles of the Laws of Scotland*, 10th ed. p. 410.

[12] *Blair* v. *Strachan*, 1894, 21 R. 661.

(3) **The Extent of the Easement of Light.**—In England, the extent of the easement of light is the same, whether the right be acquired at common law or under the Prescription Act,[1] as are also the conditions precedent necessary to constitute a cause of action for interference with such easement.[2] For that Act has not altered the nature of the right, or the principle on which it is to be determined whether the right has been infringed, but it has merely substituted a statutory title for the fiction of a lost grant or covenant not to obstruct.[3] According to the recent decision of the House of Lords in *Colls* v. *Home and Colonial Stores Limited* (where the ruling in the previous case of *City of London Brewery Company* v. *Tennant*, 1874, L.R. 9 Ch. 312, was approved of), the possessor of ancient lights is entitled to sufficient light, according to the ordinary notions of mankind, for the comfortable use and enjoyment of his house as a dwelling-house, if it is a dwelling-house, and for the beneficial use and occupation of the house, if it is a warehouse, or shop, or other place of business.[4] There is, however, no proprietary right (as previously explained)[5] to the light itself, in the owner of the dominant tenement, who has merely a right to resist the deprivation of light to such an extent as to amount to a nuisance;[6] and, in each case, the question for determination is not whether, since the alleged obstruction, there is *less* light than there was before, but whether the light left is reasonably sufficient for the dominant owner's enjoyment,[7] or, in other words, whether there has been such a diminution of light as to render the premises in respect of which it is claimed to a *sensible* degree[8] less fit for the purposes of business or occupation.[9] Moreover, even

[1] *Allen* v. *Seckham*, (1878) 11 Ch. Div. 790; *Leech* v. *Schweder*, (1874) L.R. 9 Ch. App. 463. The Prescription Act, 1832, is only concerned with the mode of proof (per Earl of Halsbury L.C. in *Colls* v. *Home and Colonial Stores Limited*, 1904, A.C. at p. 183).

[2] Per Vaughan Williams L.J. in *Kine* v. *Jolly*, (1905) 1 Ch. pp. 488, 489.

[3] *Kelk* v. *Pearson*, (1871) L.R. 6 Ch. 808, 811; per Lord Selborne in *The City of London Brewery Company* v. *Tennant*, (1874) L.R. 9 Ch. App. at p. 219; per Bowen L.J. in *Scott* v. *Pape*, (1886) 31 Ch. Div. at pp. 570, 571.

[4] See per Lord Lindley in *Colls* v. *Home and Colonial Stores Limited*, (1904) A.C. at p. 208, and per James L.J. in *Kelk* v. *Pearson*, (1871) L.R. 6 Ch. App. at p. 811. Where, however, the right to light claimed is not the ordinary easement, but a special light, created by *covenant*, an injunction will, it is believed, still be granted without regard to the amount of damage inflicted, as was formerly the practice (see *Leech* v. *Schweder*, 1874, L.R. 9 Ch. App. 463).

[5] *Ante*, p. 302.

[6] *Colls* v. *Home and Colonial Stores Limited*, *supra*. (As to the form of order for an injunction to restrain such a nuisance, see *Anderson* v. *Francis*, 1906, W. Notes, 160; *Higgins* v. *Betts*, 1905, 2 Ch. at p. 217; *Colls* v. *Home and Colonial Stores Limited*, 1904, A.C. at p. 194.) In a proper case damages in lieu of an injunction may still be granted (see *Higgins* v. *Betts*, *supra*).

[7] *Buck* v. *Stacey*, (1826) 2 C. & P. 465; *Higgins and another* v. *Betts*, (1905) 2 Ch. 210; *Warren* v. *Brown*, (1900) 2 Q.B. 722; *Kine* v. *Jolly*, *supra*.

[8] *I.e.* to such an extent as to amount to a nuisance. See *Colls* v. *Home and Colonial Stores Limited*, *supra*.

[9] *Parker* v. *Smith*, (1832) 5 C. & P. 438.

where a *special* light has been enjoyed, for a special purpose, for the period prescribed by the Prescription Act, no other right is gained than that of preventing the servient owner from building, so as to interfere with the light previously enjoyed, to the extent of causing a nuisance.[1] And in the case of an implied grant of light, presumed by law to accompany, under ordinary circumstances, the lease or gift of a house, a grant of a *special* light is not readily implied,[2] but only the enjoyment of so much light unobstructed as is reasonably necessary for the fair and comfortable use of the premises which are the subject of the grant.[3] It was formerly considered that the existence of 45 degrees of light, from the zenith, was in itself a more or less conclusive test of the sufficiency of the amount of light.[4] This notion seems to have arisen from a reference to a Metropolitan Building Act,[5] which, however, was not intended to deal with questions of light, but to determine what was a reasonable width of street, having regard to the height of the houses on both sides, and as regards air and everything else.[6] It is now, however, settled that there is no law or inference of fact that the angle of 45 degrees is sufficient;[7] though, on the other hand, it would seem that the fact that 45 degrees of sky are left unobstructed may, under ordinary circumstances, be considered *prima facie* evidence that there is not likely to be material injury,[8] since experience shows that it is, generally speaking, a fair working rule to consider that no substantial injury has been done where an angle of 45 degrees remains, especially if there is also a good light from other directions.[9]

[1] *Ambler* v. *Gordon*, (1905) 1 K.B. 417, which, *semble*, has over-ruled *Theed* v. *Debenham*, (1876) 2 Ch. Div. 265.

[2] *Corbett* v. *Jonas*, (1892) 3 Ch. 137; *Herz* v. *The Union Bank of London*, (1859) 2 Giff. 686.

[3] Per Bowen L.J. in *Birmingham, Dudley, and District Banking Company* v. *Ross*, (1889) 38 Ch. Div. at p. 313. In this connection it may be mentioned that an easement should not be exercised by the owner of the dominant tenement in such a way as to increase the burden on, and to the detriment of, the servient tenement (*Milner's Safe Co. Ltd.* v. *Great Northern and City Ry. Co.*, 1906, W. Notes, 163; and see *Ankerson* v. *Connelly*, 1906, 2 Ch. 544). It has been recently held in Scotland that if two meanings can be placed on a clause in a grant imposing a servitude, that meaning shall be given which is most favourable to the servient tenement (*Clark & Sons* v. *Perth S. Board*, 1898, 25 R. 919).

[4] See Roscoe's *Digest of the Law relating to the Easement of Light*, 4th ed. p. 50; and see *Hackett* v. *Baiss*, (1875) L.R. 20 Eq. 494; *Beadel* v. *Perry*, (1866) L.R. 3 Eq. 465.

[5] *I.e.* the Metropolis Management Amendment Act, 1862 (25 & 26 Vict. c. 102), s. 85, repealed by the London Building Act, 1894, ss. 47, 215.

[6] Per Cotton L.J. in *Parker* v. *The First Avenue Hotel Company*, (1883) 24 Ch. Div. 282.

[7] *Ibid.*; and see per James L.J. in *Ecclesiastical Commissioners* v. *Kino*, (1880) L.R. 14 Ch. Div. at p. 220.

[8] Per Lord Selborne L.C. in *City of London Brewery Company* v. *Tennant*, (1873) L.R. 9 Ch. App. at p. 220.

[9] Per Lord Lindley in *Colls* v. *Home and Colonial Stores Limited*, (1904) A.C. at

The amount of light capable of being acquired under the Roman civil law depended more or less on the nature of the easement possessed, and was not governed by the same considerations as now obtain in England. The widest servitude of all—namely, *ne luminibus officiatur, et ne prospectui offendatur*—prevented the owner of land building so as to exclude light or view of his neighbour,[1] whether by trees or by buildings,[2] and applied not only to his neighbour's existing buildings, but also to those made subsequently to the creation of the servitude.[3] In this connection it may be stated that, according to the Roman law, *lumen* was free vision to the sky, while *prospectus* was free vision over lower grounds.[4]

Some reference must now be made to the provisions of the various Codes Civil which concern the extent of the easement or servitude of light. While dealing with this matter it may be stated that some of the Codes regulate, with considerable elaboration, the subject of making windows or openings, and prohibit the introduction by one neighbour, without the consent of the other, into a party wall, of any window or opening of any kind, even of glass not transparent.[5] On the other hand, however, the owner of a wall, not a party wall, adjoining immediately the heritage of another, may open in such wall, without any one's consent, lights and windows with iron bars and glass not transparent; such windows, however, to be furnished with an iron trellis (the bars of which must be 1 decimetre distant from one another at the outside) and with a casement of non-transparent glass,[6] and to be 26 decimetres (*i.e.* 8 feet) above the floor, in the case of a ground-floor room, and at 19 decimetres (6 feet) above the floor on the upper stories.[7] Direct views or prospect windows, balconies, or other similar projections, over an inclosed or uninclosed heritage of a neighbour, cannot be made, unless there be 19 decimetres (6 feet) distance between the

p. 210. In *Ecclesiastical Commissioners* v. *Kino*, (1880) 14 Ch. Div. 213, James L.J. said, "The rule of 45 degrees is of very slight importance, and only to be used in the absence of any other means of arriving at a conclusion."

[1] D. viii. ii. 4. 15. This was a *negative* servitude; see *ante*.

[2] D. viii. ii. 17. 1. A tree was not necessarily an obstruction to light, as a tree, unlike a wall, is not always in the same condition (D. viii. ii. 7; but see D. viii. i. 17). Where the servitude was merely not to raise anything above a certain height, it did not prevent the servient owner from having a tree above the prescribed height; but if the servitude were not to injure the view of your neighbour, and trees obscured such view, they could not be allowed to stand (D. viii. ii. 12).

[3] D. viii. ii. 23 pr. There was, however, a difference between the servitude "the lights of my house to be preserved in their present state," and the servitude "you bind yourself not to injure my lights." For, while the former servitude did not extend to lights subsequently acquired by new openings, the latter, though equivocal in its terms, *semble* covered all lights, present and future (D. viii. ii. 23).

[4] D. viii. ii. 16.

[5] Codes Civil, Fr. & Bel. 675; Esp. 580.

[6] Codes Civil, Fr. & Bel. 676; Esp. 581.

[7] Codes Civil, Fr. & Bel. 677; Esp. 581.

outward facing of the wall in which they are made and the said heritage;[1] while oblique or side views upon a like heritage cannot, as provided by some Codes, be made, if there are not 6 decimetres of distance,[2] though in Spain this limit does not apply to lands separated by a public road.[3] By the Egyptian Codes, the owner of a higher story may not increase the elevation of his building in such a way as to injure the lower story.[4] With regard to the planting of trees, some of the Codes contain provisions regulating the distance of those planted from existing trees, and provide as to other kindred matters.[5]

In the case of a non-apparent and continuous servitude of light, which, as already stated,[6] can only be established by written title, its user and extent are (according at least to some of the Codes Civil) regulated as far as possible by such title,[7] while it is also sometimes provided that, in the case of an apparent and continuous servitude of light, which, it has been seen,[8] can be acquired either by title or by prescription, its user and extent shall depend on such express regulations of the Codes as may be applicable thereto.[9] According to the German Code, 1900, which, as already explained,[10] requires a servitude, like any other land burden in that country, to be duly inscribed in the official land book, the extent of a servitude appears to be regulated by the express agreement of the parties, as disclosed in the Act consenting to, and authorising, the inscription.[11]

The Indian Easements Act, 1882, provides, by s. 28, that the extent and mode of enjoyment of an easement must be fixed with reference to the probable intention of the parties and the purpose for which the right was imposed or acquired, and that, in the absence of evidence as to such intention or purpose, in the case of the easement of light, (*a*) the extent of a right to the passage of light or air to a certain window, door, or other opening, imposed by a testamentary or non-testamentary instrument, is the quantity of light or air that entered the opening at the time the testator died or the non-testamentary instrument was made, and (*b*) the extent of a prescriptive right to the passage of light or air to a certain window, door, or other opening, is that quantity of light or air which has been accustomed to enter that opening during the whole of the prescriptive period, irrespectively of the purposes for which it has been used.

In Scotland, where, as already stated,[12] the servitude of light, being

[1] Codes Civil, Fr. & Bel. 678, 680; Port. 2325; Esp. 581, 585; Grisons, 241; Ital. 587; Lower Canada, 533–8. In Egypt the distance is 1 metre (39 inches). See Egyptian Code (Mixed Tribunals), arts. 61, 62; *ibid.* (Native), 39, 40.

[2] Codes Civil, Fr. & Bel. 678; Esp. 582. [3] Esp. 584.

[4] Mixed Tribunals, 56; Native, 35.

[5] Codes Civil, Fr. & Bel. 671–3.

[6] *Ante*, p. 312.

[7] Codes Civil, Fr. & Bel, 686; Port. 2275; Esp. 598. [8] *Ante*, p. 312.

[9] Codes Civil, Fr. & Bel, 686; Esp. 598. [10] *Ante*, p. 313.

[11] German Civil Code, 1900, book iii. s. ii. art. 874. [12] *Ante*, p. 314.

negative, can be acquired by grant, but not by prescription alone,[1] there is no exception made in favour of ancient lights,[2] and the extent of the servitude of light depends on the terms of the grant, so that when a proprietor is not specially restrained by the grant of a servitude, or otherwise, he may so use his property as to completely exclude the light from an adjoining tenement.[3] However, the servitudes *altius non tollendi et non officiendi luminibus vel prospectui* restrain, according to Scotch law, proprietors from raising their houses beyond a certain height, or from making any building at all, or any that may hurt the light or prospect of the dominant tenement;[4] while another form of servitude of light prevents windows and other openings, which would interfere with a neighbour's privacy, being struck out in the servient tenement.[5]

(4) **The Extinction of the Easement of Light.**—The English law recognises various modes of extinguishing the easement of light. Thus it can be determined by express release, which must, however, be under seal, in order to be effectual.[6] So again, by Act of Parliament, any easement can be put an end to.[7] But perhaps the most ordinary method is by abandonment, which, in the case of a prescriptive easement at least, cannot be accomplished without a deed or some evidence from which a release can be presumed.[8]

Whether there has been an abandonment is a question of fact in each case, but, as a general rule, if an ancient light has been completely shut up, with brick and mortar, above twenty years, it loses its privilege.[9] More-

[1] Erskine's *Principles of the Law of Scotland*, 20th ed. p. 206.

[2] Green's *Encyclopædia of Scots Law*, vol. viii. p. 123.

[3] *Ibid.*

[4] Erskine's *Principles of the Law of Scotland*, 20th ed. p. 206. According to Roman-Dutch law, which so largely obtains in South Africa, the right to free prospect not only includes the light from the heavens above, but also a free and unobstructed view along the earth in a straight line, whereby the prospect must be left in the same condition it was in at the time of creating the servitude (Van Leeuwen's *Roman-Dutch Law*, translated by Kotze, vol. i. p. 291).

[5] Erskine's *Principles of the Law of Scotland*, 20th ed. p. 206.

[6] Gale on *Easements*, 7th ed. p. 482. In this connection it may be mentioned that documents of title showing the title to, and the extinguishment of, an easement formerly appurtenant to the land sold over a servient tenement retained by the vendor relate to the servient tenement, and the vendor has a right to retain them under the Vendor and Purchaser Act, 1874 (37 and 38 Vict. c. 78), s. 2 (*In re Lehmann & Walker's Contract*, 1906, 2 Ch. 640).

[7] See *Barlow* v. *Ross*, (1890) 24 Q.B.D. 381; *Badham* v. *Marris*, (1882) 52 L.J. Ch. 237; *Duke of Bedford* v. *Dawson*, (1875) L.R. 20 Eq. 353.

[8] Per Willes J. in *Lovell* v. *Smith*, (1857) 3 C.B. N.S. at p. 127; per Curiam in *Regina* v. *Chorley*, (1848) 12 Q.B. at pp. 518, 519.

[9] *Lawrence* v. *Obee*, (1814) 3 Camp. 514. Whether twenty years' non-user will, without other evidence, of itself suffice to extinguish an easement of light seems to be doubtful (Hudson and Inman's *Law of Light and Air*, 2nd ed. p. 124; and see *Smith* v. *Baxter*, 1900, 2 Ch. 138), though, under certain circumstances, an intention to abandon ancient lights may be inferred where windows have been disused for a less

over, where the dominant owner has so altered his premises as to confuse the evidence, with regard to the extent of the original ancient lights, that he is unable to establish the identity therewith of the new lights claimed, he may thereby lose his easement,[1] and he may, it seems, also lose it where he has, to the prejudice of the servient owner, substantially altered the mode of enjoying the light originally acquired.[2] On the other hand, however, it is to be noticed that ancient lights are not forfeited by the demolition or alteration of the building in respect of which they are claimed,[3] but, on the contrary, are transferred to the new or altered building, if an intention not to abandon them is indicated (through no evidence of any such intention need be given in an action to obstruct ancient lights),[4] and the new or altered building continues to enjoy the whole, or at least a substantial part, of the light which passed into the dominant tenement through the old apertures.[5] For the easement of light acquired by prescription is to an "*ancient light*," and not to an "*ancient window*,"[6] and in this connection it may be mentioned that, where a new window is opened, it must not be obstructed if the obstruction cannot be accomplished without interference with an ancient light.[7]

In addition to the other modes of putting an end to an easement, it may be mentioned that, in certain comparatively rare cases, an easement of light may be forfeited by acquiesence, on the part of the dominant owner, in the obstruction thereof by means of buildings which have been erected,

period than twenty years (see *Moore* v. *Rawson*, 1824, 3 B. & C. 332). According to some of the modern Codes Civil, non-user for the same number of years as suffices to acquire an easement will extinguish it (see *post*). Where ancient lights which had been closed for twenty years were reopened upon their being obstructed by a building on adjoining land, it was held that the judge was right in directing a jury that the plaintiff was still entitled to an easement unless he had so closed up the lights as to manifest an intention of permanently abandoning them, or to lead the defendant to incur expense or loss in the reasonable belief that they had been permanently abandoned (*Stokoe* v. *Singers*, 1857, 26 L.J. Q.B. 257).

[1] *Scott* v. *Pape*, (1885) 31 Ch. Div. 554; see also *Greenwood* v. *Hornsey*, (1886) 33 Ch. Div. 471; *Fowler* v. *Walker*, (1881) 51 L.J. Ch. 443; *Cotching* v. *Bassett*, 32 L.J. Ch. 286; *Blanchard* v. *Bridges*, (1835) 4 A. & E. 176; *Heath* v. *Bucknall*, (1869) 38 L.J. Ch. 372, and see *Ankerson* v. *Connelly*, (1906) 2 Ch. 544.

[2] *Ankerson* v. *Connelly*, (1906) 2 Ch. 544; *Garrett* v. *Sharp*, (1835) 3 A. &. E. 325; and see *Milner's Safe Co. Ltd.* v. *Great Northern & City Ry. Co.*, (1906) W. Notes 163.

[3] See *Smith* v. *Baxter*, (1900) 2 Ch. 138; *Scott* v. *Pape*, *supra*; *National Provincial Plate Glass Insurance Company* v. *Prudential Insurance Company*, (1877) 6 Ch. Div. 757; *Newson* v. *Pinder*, (1884) 27 Ch. Div. 43 C.A.; per Lord Hardwicke L.C. in *Fishmongers' Company* v. *East India Company*, (1752) 1 Dick. at p. 164.

[4] *Smith* v. *Baxter*, (1900) 2 Ch. 138.

[5] *Scott* v. *Pape*, *supra*.

[6] Per Fry J. in *National Provincial Plate Glass Insurance Company*, (1877) 6 Ch. Div. 755, 765.

[7] *Tapling* v. *Jones*, (1865) 11 H.L. Cas. 290. In accordance with this decision is s. 31 of the Indian Easements Act, 1882.

with his knowledge and encouragement, by the servient owner.[1] Again, another method by which the easement of light may be lost is by unity of possession. Thus, where one person becomes entitled *in fee* to both the dominant and servient tenements, the easements are destroyed, being merged in the greater rights of ownership.[2] Where, however, there is a union, *for different estates*, of the ownership of dominant and servient tenements, a mere suspension of the accruing of the right to light takes place, which revives on a severance of the ownership.[3]

The Roman Law, in regard to the extinction of the servitude of light, does not call for detailed notice. Suffice it to state that, like other servitudes, it could be extinguished by renunciation,[4] by merger (*confusio*), which occurred where the dominant and servient tenements became united in the same person,[5] by the total destruction of the *res dominus* or the *res serviens*,[6] and by acquiescence, on the part of the dominant owner, for ten years, if present, or for twenty years, if absent, in an obstruction by the owner of the servient tenement.[7] The extinction of a servitude against one neighbour did not operate to extinguish it against another neighbour.[8]

By the Scotch law of servitudes, which, as already explained, is based on the Roman civil law,[9] the servitude of light may be extinguished in

[1] *Cotching* v. *Bassett*, (1862) 32 L.J. Ch. 286; *Stokoe* v. *Singers*, (1857) 26 L.J. Q.B. 257.

[2] Hudson and Inman's *Law of Light and Air*, 2nd ed. p. 119; Gale on *Easements*, 7th ed. p. 486; Goddard on *Easements*, 6th ed. p. 552.

[3] Roscoe's *Digest of the Law relating to the Easement of Light*, 4th ed. p. 46; *Ladyman* v. *Grave*, (1871) L.R. 6 Ch. App. 763; *Simper* v. *Foley*, (1862) 2 Johns. & H. 555. The Settled Land Acts, 1882–1890, contain various provisions with regard to easements affecting settled lands, and provide that, on an exchange or partition, any easement may be reserved or granted over or in relation to the settled land, or any part thereof, or other land, or an easement, right, or privilege of any kind may be given or taken in exchange or on partition or for any other easement, etc., of any kind.

[4] See Lord Mackenzie's *Roman Law*, 6th ed. p. 186.

[5] D. viii. ii. 30; D. viii. vi. 1. If the dominant owner bought the servient tenement and then wished to sell it, he could impose, afresh, the same servitude, though, if he did not do so, he sold it enfranchised and free from all servitudes (D. viii. ii. 30). The servitude was not, however, extinguished by the dominant owner acquiring a *portion* of the servient tenement (*ibid.*), nor by his acquiring the usufruct thereof (*ibid.*).

[6] Hunter's *Roman Law*, 4th ed. p. 423. In the case of a house burnt down, though the servitude was lost if it was not rebuilt, this result did not follow if the old house was replaced by a new one like it (*ibid.*; and see D. viii. ii. 20. 2).

[7] Hunter's *Roman Law*, 4th ed. p. 422; D. viii. ii. 6. A tree situate in the same position did not destroy the servitude of light, as, unlike a wall, it is not always in the same condition (D. viii. ii. 7). The period of *usucapio* for releasing land from prædial servitudes was originally two years, but was extended by Justinian (Hunter's *Roman Law*, 4th ed. p. 422).

[8] D. viii. ii. 32.

[9] Bell's *Principles of the Laws of Scotland*, 10th ed. pp. 410 *et seq.*; Rankine's *Land Ownership*, p. 385 *et seq.*

any of the ways just mentioned, and also in other ways, as, for example, by Act of Parliament.[1]

By the Indian Easement Act, 1882[2] (as amended by Act XII. of 1891), the extinction, suspension, and revival of easements in various ways (most, if not all, of which are recognised by the English law) are dealt with in several sections.[3]

The provisions of various Codes Civil, with regard to the extinction of servitudes, must now be referred to. According to some Codes, all servitudes temporarily cease when they fall into such a state that they can no longer be used,[4] but revive when the things subject thereto are restored to their original condition.[5] Generally, the servitude of light is extinguished by non-user for such a length of time as may suffice to acquire it,[6] in cases when it can be so acquired;[7] and in the case of the servitude of view prospect, a cessation of enjoyment for a like period from the execution of works obstructing it, would, it is presumed, probably operate to extinguish it. If the dominant tenement belongs to several individuals, the enjoyment of one of them prevents prescription running against the others, according to most of the Codes,[8] and where one of several co-proprietors is a minor, against whom there can be no prescription, the rights of all of them are preserved from extinction by non-user or other like causes.[9] As regards the effect of unity of possession on the servitude of light, most of the Codes provide that servitudes shall be extinguished when the dominant and servient tenements are united in the same person by right of ownership.[10]

[1] Erskine's *Principles of the Law of Scotland*, 20th ed. p. 210. Thus servitudes over land are extinguished by the taking of lands under compulsory statutory powers (*Oban Town Council* v. *Callander & Oban Ry.*, 1892, 19 R. 912).

[2] No. V. of 1882.

[3] SS. 37 *et seq.*

[4] Codes Civil, Fr. and Bel. 703; Lower Canada, 559; Aird's *Civil Laws of France to the Present Time*, p. 92.

[5] Codes Civil, Fr. and Bel. 703; Lower Canada, 560.

[6] Codes Civil, Fr. and Bel. 706; Ital. 666; Holl. 754; Esp. 546; Grisons, 257; Port. 2279. The Code of Lower Canada provides that servitudes shall be extinguished by non-user during thirty years between persons of full age and not privileged (art. 562). By the Japanese Code twenty years' interference with a servitude extinguishes it (arts. 167, 291); and according to most of the European Codes the period of non-user required to extinguish a servitude is calculated from the day on which some act has been done contrary to the servitude (Codes Civil, Fr. and Bel. 707; Ital. 667; Holl. 754; Esp. 546; Grisons, 257; Port. 2280; and see Lower Canada, 563).

[7] See *ante*.

[8] Codes Civil, Fr. and Bel. 709; Ital. 671; Holl. 757; Esp. 548; Grisons, 257; Port. 2281; Lower Canada, 563.

[9] Codes Civil, Fr. and Bel. 710; Lower Canada, 566; and see Ital, 672; Port, 2281.

[10] Codes Civil, Fr. and Bel. 705; Ital. 664; Holl. 753; Port. 2279; Esp. 546; Grisons, 257; Lower Canada, 561.

FOREIGN LAW AND THE CONTROL OF ADVERTISEMENTS IN PUBLIC PLACES.

[*Contributed by* W. J. Barnard Byles, Esq.]

Picturesque Scenery.—Perhaps the most debatable point in connection with the advertising question at the present time is that of controlling the exhibition of advertisements in places where, if they are not absolutely a blot on the landscape, they are yet an intrusion which can well be dispensed with. But few attempts have yet been made to deal with this difficult question. A noteworthy example is the Prussian law of June 2, 1902. This law definitely authorises the police authorities in rural districts to prohibit such advertising boards or notices or pictorial devices as disfigure the landscape in places remarkable for their natural beauty. The provisions of this law were originally intended to apply only to the Rhine districts, where the question of advertising disfigurement had recently become acute, and the local authorities found themselves powerless to deal with the matter; but the measure, as eventually passed, was made of general application. It is possibly somewhat startling to find such a body as the local police entrusted with the duty of deciding what is a picturesque neighbourhood, but in actual practice the term "police authorities" includes authorities who correspond closely to our elective municipal bodies.[1] On the other hand, it would appear, from the debate in the Prussian Landtag, that, under this law, the police are intended to have a considerable power of initiative, and can enforce the law on their own responsibility. Provisions relating to the subject of the protection of picturesque scenery (*landschaftliche Schönheit*) are also to be found in a recent law of the Grand Duchy of Hesse of July 16, 1902, which deals generally with the subject of the protection of monuments, whether natural or artificial. Its provisions, in their application, seem not to differ materially from those contained in the Prussian law. It, however, grants compensation to the owners of advertisement boards already *in situ* at the time of the law coming into force, which they are compelled to remove. On this point the Prussian law is silent; presumably the matter is

[1] For information as to this law, and for other practical information relating to the advertising question generally, the writer begs to acknowledge his indebtedness to the pages of *A Beautiful World*, the official journal of the Society for Checking the Abuses of Public Advertising.

dealt with otherwise. Under Italian law, municipal councils have the power to object to the position of any advertisement, if on or near public buildings or ancient monuments, on the ground that the advertisement is inartistic (*antiestetico*) or spoils the beauty of its surroundings. Here we find the decision of the matter left directly to the control of a popular body, with whom conflicting interests may well prevail. The more direct methods employed in Prussia, if not in Hesse, are perhaps only possible in a country accustomed to bureaucratic guidance. That the Prussian law deals only with rural districts is accounted for by the fact that regulations already exist which are considered adequate for the protection of urban areas.

Official Advertisement Boards.—Almost universally, it must be admitted, both in Europe and America, the question of the regulation of advertisements is handed over to the local authorities. What few general provisions there are, are to be found as a rule in the so-called Press Laws, but these latter generally relate to the cases of actually seditious or immoral advertisements. A Parliamentary Return issued in 1903 deals at considerable length with the somewhat tangled maze of provisions in force in many countries, and makes it possible to gain some idea of the general trend of foreign opinion on the matter. Among continental provisions those contained in the police regulations of Berlin, issued in January 1880, are particularly noteworthy, since they are said to have been taken as a model in the case of many other German cities, and to a certain extent it would seem in the case also of some Dutch towns. These German regulations provide for the erection of official advertisement boards on which alone advertisements in public places may be exhibited. This is a regulation now very generally adopted, directly or indirectly. In Austria and Italy, for instance, the permission of the local authorities is required before any advertisements can be exhibited in public places. Moreover, the local authorities have the right to say when and where only such advertisements are to be placed, a provision which may in practice not differ materially from that of official boards. In Switzerland these boards seem generally to be leased out to bill-sticking agencies. It is certainly difficult to reconcile the existence of these official boards with the right, as it exists in this country, of every man to advertise on his own land or lease his land for the purpose as he pleases, provided he does not offend against certain regulations, such as those relating to sky signs, flashlights, etc. It stands to reason that all such advertisements must, in order to be effective, be exhibited in a street or other public place, not necessarily in the open air, to which the public have access. The Berlin regulations at any rate do not leave this point in doubt, since they provide that the owner or lessee of real property may hang or post on such property only those advertisements that relate to his own interests. In other words, it would seem, he may not lease out his property for advertising purposes. The would-be advertiser is therefore distinctly limited in his choice of advertisement sites, since, if he has no land of his own, he must content

himself with what space he may find vacant on the official boards. There is no evidence, however, to show that such a drastic provision as this, a provision which must in fact go to the root of the modern advertising system, has been extensively adopted elsewhere than in Berlin. In Austria, for instance, though, as already mentioned, the system of official advertisement boards is apparently in force, there is no suggestion of the existence of any check on the power of an owner to lease his property for advertising purposes, even though any advertisement, except of a purely local or business character, must receive official sanction. In France, when the only official boards in existence are those strictly reserved for official notices, any such curtailment of the owner's right is unknown. In short, it would appear that in most cases the real *raison d'être* of these official notice-boards is to prevent public or communal buildings, lamp posts, trees, etc., being placarded over with advertisements. Buildings and property of the State are almost invariably forbidden ground to the bill-sticker.

Electioneering Advertisements.—In France, however, and also in Italy and Hungary, electioneering advertisements, relating both to parliamentary and municipal elections, may be freely posted up on public buildings. This right has been recently somewhat restricted in France, for by the law of January 27, 1902, advertisements of this class may no longer be posted up on buildings and monuments that have an artistic character. No doubt the buildings referred to are those that are under State control in accordance with the terms of the French law of 1887 relating to the care of historical or artistic buildings. This freedom allowed to electioneering literature is interesting in another way, since it probably constitutes the only case where the English billposter in similar circumstances is at a disadvantage compared with his foreign *confrère*.

American Regulations.—It is to America that we naturally look for some provisions in restraint of unbridled advertising. In the United States advertising has notoriously been carried to great lengths, and it was inevitable that sooner or later attempts would be made to put some check on its further unrestrained development. When we find that the city of Indianapolis has found it necessary to forbid (*inter alia*) advertising by means of vehicles containing "martial bands," and that, in the newly acquired American territory of the Philippines, the regulations of the city of Manilla forbid advertising by means of musical instruments, we can readily understand the spirit which has prompted the passing of regulations in restraint of the use or abuse of the right to advertise. No American regulations on the subject are more comprehensive and interesting than those passed in Chicago in 1900. Unfortunately they are only interesting from a theoretical point of view, for there appears to have been no attempt made to enforce them. These regulations specifically forbid the erection of any advertisement boards exceeding twelve feet square in size within four hundred feet of any public park or boulevard. The exact meaning of the term "boulevard" is perhaps

not very self-evident, since in the usual Continental sense of the term it might well include some of the most important business thoroughfares. In another part of these regulations, however, mention is made of a "boulevard or pleasure driveway," so that the latter somewhat cumbersome phrase appears to confine the term to a street or thoroughfare that is in no sense used for business purposes. The Advertisements Regulation Bill of 1906, as well as the practically identical Bill of 1905, sought to confer on local authorities power to regulate or restrict the exhibition of advertisements in places where their presence might injuriously affect "the amenities of a public park or pleasure promenade" or which might "disfigure the natural beauty of a landscape." A recent law of the State of Massachusetts deals with the same question as the Chicago regulation. It gives the local authorities in any town or city power "to make such reasonable rules and regulations, respecting the display of signs and advertisements in or near and visible from public parks and parkways entrusted to their care as they may deem necessary for preserving the objects for which such parks are established and maintained." It is satisfactory to learn that, unlike the case of Chicago, this provision is actually being brought into operation, and meets with general approval. Another of the Chicago regulations forbids the posting up of advertisements in any street where three-quarters of the buildings are devoted to "residence purposes" only, unless the consent of three-quarters of the residents and property owners on both sides of the street be previously obtained. A subsequent regulation tends indeed to show that this prohibition does not apply to advertisements, not exceeding three feet square in size, which relate only to the business carried on on the premises on which they are exhibited, or which relate to the sale or renting of such premises. But one cannot help imagining that, even if this be so, this provision is of too stringent a nature, especially in a city of so essentially a commercial character as Chicago, and that its inclusion may well account for the non-enforcement of these provisions generally, since it would be manifestly inequitable to enforce some of the provisions to the exclusion of others. The advertisement of patent medicines, and in fact of remedies for nearly every earthly complaint, is a well-known feature of American advertising. That the practice is one that lends itself to abuse is of course obvious. But these Chicago regulations appear to have been conceived in too drastic a spirit, when we find them absolutely forbidding the posting up of any advertisement "giving notice of any person having, or professing to have, skill in the treatment, or curing of any disorder or disease, or giving notice of the sale or exposure for sale of any nostrum or medicine." In other words, these regulations, if enforced to the letter, would confine all advertisements of this class to the advertisement columns of newspapers. Almost all American regulations forbid the distribution of "dodgers" in public places as a means of advertising. The term "dodger" appears to be the American equivalent of the English "handbill." The point is an

interesting one, since it affords practically the only case of a parallel provision in English law. The English case of *Hills* v. *Davies* (88 *Law Times* Rep. 464) shows that there is power, at least in the metropolitan area, to forbid the practice of advertising by means of the distribution of handbills in public places. Nothing is indeed more striking than the difficulty of finding a parallel in English law to the vast majority of these foreign regulations. This country's position in this respect is, in fact, rapidly becoming a unique one. Special parliamentary powers have, it is true, been obtained in many districts to deal with the regulation of advertisements. It may not, therefore, be absolutely correct to say that, at the present day, only in the British Isles can the would-be advertiser, who otherwise keeps within the law relating to decency, good order, and public safety, find himself untrammelled by any legal requirements. But undoubtedly from an advertiser's point of view this country must possess many attractions.

Public Safety and Public Convenience.—Regulations passed with the object of ensuring public safety are naturally to be met with in practically all regulations dealing with advertisements. In countries such as Austria and Italy, where a police permit is necessary before an advertisement is posted up in a public place, this requirement must in itself ensure a reasonable amount of safety. It is noteworthy that in many American cities the question of the size and construction of advertisement boards is a matter left to the control of the fire department. The Chicago regulations are again prominent in this connection, as they require all signs or bill boards, other than those painted or erected on any building, to be limited in their superficial area to one hundred square feet, and to be made of sheet or galvanised iron, or some equally incombustible material. Apart from any powers they may possess under a special Act, it is indeed remarkable how little control local authorities in this country have over advertisement boards in their district. Almost the only power vested in them in this connection is that contained in the Advertising Stations (Rating) Act, 1889; but that Act only applies to boards erected by licence of the local authorities upon or over any part of any highway, or on any lands the property of the local authority. Moreover, the Act is so fenced in by the question of the application of other local or general Acts as scarcely to deserve to rank in this particular connection as a public general statute. It is, however, scarcely a matter of regret that the passing of this Act has at least had one marked effect—it has acted as a material check on the increase of advertisement boards on agricultural land. Few provisions are to be found in any country dealing with what may be called the subject of public convenience. The only one of any importance is that contained in a police regulation issued in Berlin in August 1899, which forbids advertisements being placed on the windows or the exterior of public conveyances. It may have been an accidental coincidence, but it is significant to note that this Police

Ordinance was issued immediately after the publication in Germany of an official report on advertising disfigurement as practised in England.

Local Regulations in this Country.—The statement that in this country it is hard to find any parallel to foreign law on this question is one that, as already suggested, requires considerable modification in certain cases. As long ago as 1899 the Corporation of Edinburgh obtained extensive powers of regulation by means of a private Act. The example of Edinburgh has since been followed by many other corporations, notably by Dover in 1901. The Dover regulations are especially remarkable by reason of their stringency. They were in fact passed with a special object, that of preventing the disfigurement of Dover cliffs by advertisements. The principle of both the Edinburgh and Dover Acts is that no advertisements, including those already in position, other than those specially excepted, can be exhibited without the licence of the corporation, for which licence, however, no fee is chargeable. The Edinburgh Act excepts from the liability to be licensed (*inter alia*) advertisements relating to the trade or business carried on on the premises and any advertisement within the window of any house. The Dover Act only excepts two classes of advertisements altogether—advertisements within the windows of a house (as in the Edinburgh Act) and advertisements of any entertainment exhibited on the land or building upon or in which the same is to be held. Thus, according to the strict letter of this Act, a man may not advertise his own business on the house in which he actually carries on the business without getting a special licence to do so. The fact that licences are, it is believed, freely granted under this Act, does not make the position less anomalous. Even the Prussian police regulation above mentioned does not go so far as this. It is indeed not to be wondered at that Parliament has been chary about conferring similar powers on other corporate bodies which have, since 1901, included in their general corporate bills provisions giving corporations powers to regulate advertisements. These powers, as exemplified in recent cases, appear to be of a somewhat indefinite character. With the subject of the control of sky signs they deal at considerable length, but the provisions regarding other classes of advertisements are distinctly meagre: they are almost invariably confined to the control of advertisement boards which exceed a certain height, usually twelve feet, above the street level. There appears, in fact, to be no question in any of these later Acts of leaving the matter to the control of the local authorities in the same general way that it is left to local authorities in other countries.

The Necessity for a General Act.—The actual character of the regulations in force in foreign countries, being a matter almost invariably left to the discretion of the local authorities, no one uniform code of provisions is likely to be forthcoming in any country, even in Germany, where regulations of the Berlin type have been very generally, though perhaps not universally, adopted. The Advertisements Regulation Bill desires to give

local authorities a similar power, subject to the confirmation of all by-laws by the Secretary of State. In other words, local bodies could henceforth exercise the power without going to the expense of obtaining special Parliamentary sanction, as they are at present bound to do. Moreover, local bodies, whether in urban or rural districts, would alike be able to deal with the question, and there would be a possibility of effectually preventing the disfigurement (to again quote the Advertisements Regulation Bill) of "the natural beauty of a landscape." Up to the present, the application for powers of control over advertisements appears to have been almost entirely confined to bodies exercising authority in urban districts, such as city corporations and urban district councils. In a few cases, of course, the local authority may, in fact, have control over districts that are certainly not urban ones in the ordinary sense, as, for instance, in the case of the Dover cliffs.

In one part of the Empire at any rate the necessity for preserving intact the natural beauties of a landscape has been legally recognised. The New Zealand Parliament in 1903 passed an Act (3 Edw. VII. 240) definitely entitled "The Scenery Preservation Act." Under this Act any person who "damages the scenic features" of any district, brought by special proclamation within the control of the Act, is liable to heavy penalties. Purposely, no doubt, the Act uses wide terms, in order to cover disfigurement of any sort, by advertising or otherwise, but the mere fact of the existence of such a law is instructive. At the present time this country may be divided up into districts where there are no regulations in force at all (this includes probably all rural districts), districts where the control is of the most limited character, and lastly, districts where the regulations are of the most sweeping type. A decidedly unsatisfactory, let alone illogical, state of things, for which there appears no remedy other than the passing of some general Act as to advertisement regulation.

THE JURISDICTION OF THE PRIVY COUNCIL.[1]

[*Contributed by* Sir F. Pollock, Bart.]

Starting eastward round the world from Victoria, B.C., we find the Common Law prevailing until we come to the Province of Quebec. In deciding on appeals from that Province the Judicial Committee has to interpret a very different system, a system of essentially French law and procedure which was codified nearly forty years ago mainly on the lines of the Napoleonic French Codes, but so as to preserve many distinctive features. In the Maritime Provinces we return to the Common Law. From all parts of the Dominion there may come appeals on the construction of the Confederation Act. The judgments of the Judicial Committee on such appeals already form an important body of constitutional jurisprudence.

Newfoundland, the oldest British colony, has been wholly under the Common Law since the Treaty of Utrecht. The British West Indies are for all practical purposes in the same condition, though in Trinidad English law has been introduced piecemeal and never formally received as a whole. The Bermudas have never been under any other civilised jurisdiction; they have naturally furnished but little material for the work of the Judicial Committee.

Crossing the Atlantic, we find in the Isle of Man a peculiar body of laws of ancient, apparently Scandinavian origin (see L.Q.R. xxii. 136), of which the Privy Council is now the final interpreter. We may assume, however, that ordinary matters of business not involving land tenure have been assimilated in practice to the course of the Common Law. The Channel Islands, on the other hand, have preserved a Norman customary law much more archaic in form than that of the Province of Quebec. Their constitutional relations, as part of the ancient Duchy of Normandy, to the Parliament of the United Kingdom or to the King in Parliament have never been fully defined, and it is not likely that they ever will be. By its ordinary appellate jurisdiction the Judicial Committee is here brought into contact with the medieval origins of northern French law.

Through the Mediterranean, passing Gibraltar, a post of great military

[1] A revised abstract of an address delivered at the McGill University, Montreal, and Osgoode Hall, Toronto.

and slight juridical interest, where a chartered Court administers English law and equity with comprehensive jurisdiction (see *Larios* v. *Bonany y Gurety*, L.R. 5 P.C. 346), we come to Malta, where medieval Italian usage has embroidered on a fabric of Roman law, and the complication of canonical rules with local usage has made it all but impossible even for the wisdom of the Judicial Committee to say what the law of marriage really is. Then the Suez Canal traverses a region of British political influence, now formally recognised and hardly differing from a protectorate; but the territory is not British, and from Egypt, as from the protected native states of India, no appeal lies to the King in Council. For British India we have a choice of two main ports of entry, Bombay and Karáchi, unless we choose to go round to Calcutta by Colombo, and there make acquaintance with the Roman-Dutch law still prevailing in the colony of Ceylon. This is certainly not at all like the modern law of Holland, nor is it very like the modern Roman law of the Continent, having been fixed by the writings of Dutch seventeenth-century commentators who were of classical authority in their time. In British South Africa we find the same law, but more largely modified by English influence and by legislation of an English pattern. This remark applies also to British Guiana. [Now that, in 1906, the study of Roman-Dutch law is being seriously taken up in England, I must express the hope that its followers will not let the dead hand of the seventeenth century weigh upon them so as to hinder them from profiting by the development of modern jurisprudence in Eupopean lands of Roman law, including the Kingdom of the Netherlands. Fossilised Civil Law can only be devoured by the Common Law, as in Trinidad, where they come into contact.] If we had come to India round the Cape, we should have passed Mauritius, acquired when some but not all of the Napoleonic Codes had come into force there. The result is a curious mixture of English and French law and procedure. There is, I believe, no case of a foreign criminal law having permanently maintained itself in a British possession; it would have been interesting to see whether the French Penal Code would have been an exception.

British India sends up to the Privy Council questions arising in not one but several distinct native systems of personal law. The possible variations of Hindu law by special custom, besides the schools into which the books of authority are divided, are in theory without limit. Sometimes, though seldom, recourse is had to the original Sanskrit text of an ancient law-book. In one such case the Judicial Committee sought the advice of the late Prof. Max Müller. Mahometan law is not so much before their Lordships, as most respectable Mahometans are averse to litigation in European courts. Appeals turning on the statutory law of the Anglo-Indian Codes, or on the large amount of English jurisprudence which has otherwise become the law of Anglo-Indian courts under the name of "justice, equity, and good conscience" (see *Journal Society Comp. Legisl.* 1901, p. 211),

present few difficulties outside the ordinary canons of interpretation which are applied in English municipal jurisdiction. Of late years Burma has made a substantial addition to the native systems of inheritance and family law which are presumed to be within the judicial knowledge of their Lordships. There appears to be more than one body of tribal customs besides the Buddhist religious law.

In the Straits Settlements (speaking only of British territory, not of protected native principalities) we find English law with an Anglo-Indian element introduced during the annexation to British India, and with a certain mixture of native custom (*op. cit.* p. 212). Proceeding across the ocean to Australia, we are once more in the domain of the Common Law, administered under a federal constitution which promises to be not less interesting to students of public law than that of Canada.

With the exception of the modern Codes of the German Empire, of the system of revised Japanese law still in formation, of the law of Scotland, which does not occur outside the United Kingdom,[1] and of Scandinavian law, there does not seem to be any known type of legal rules which the Judicial Committee of the Privy Council may not be called upon to administer. Indeed, Scandinavian law seems to be to some little extent represented within the Empire in the Isle of Man. If the judgments of the Privy Council do not always command universal assent, it must be remembered that no other Court in the world has a jurisdiction of such variety and complexity.

[1] There were no Scottish colonies before the Union, and it has not in fact happened since the Union that a colony was founded under the British flag by Scots who expressly adopted the law of Scotland as governing their new settlement, though I do not know of any legal or constitutional objection to this course. *Quære*, what is the law of the flag in the case of a ship registered in a Scottish port and belonging to domiciled Scottish owners?

THE REGULATION OF MOTOR-CARS AT HOME AND ABROAD.

[*Contributed by* EDWARD MANSON, ESQ.]

THE motor, ministering as it does alike to pleasure and utility, is becoming every day a more important factor in our social and industrial life,[1] and not in ours only, but in the life of all civilised nations. It bids fair to work a greater revolution than the advent of the locomotive. Meanwhile, it is certainly more formidable. The locomotive runs in a defined track, carefully fenced. The motor ramps along our highways and byeways—a common danger and too often a common nuisance. Its speed, its noise, its "ill perfuming scent," its weird freight, veiled and goggled, whirling past in a cloud of dust, are a challenge to every sense. They testify to the necessity of control, and it is remarkable how quickly, here as elsewhere, society has rallied to its own defence in a body of regulative law—witness the following record. The difficulty of a fair adjustment of such control lies largely in the strong feelings which the motor arouses—of antipathy on the one side, of partisanship on the other. To the anti-motorist the motor is the tyrant of our highways, the very personification of the "Blatant Beast" of Spenser; to the motorist it is the "paragon of animals," the joy of life. How from such opposite views is the *juste milieu* to be reached? Comparison of foreign, American, and Colonial views may at all events do something in the way of suggestion towards such a consummation.

The substance of the following pages is derived from the Report of the Royal Commission on Motor-Cars, 1906, and particularly from the valuable Appendix by Captain C. Bigham, C.M.G. What the present writer has done is, in the main, merely to rearrange the materials—to bring together the existing law under certain heads so as to make the comparison more effective, and then to add, under each head, a summary (in italics) of the amendments proposed by the Royal Commission, and the views of the Automobilist Clubs in Conference thereon.

REGISTRATION AND TESTING.

Austria.—All motor vehicles must be tested and approved, either each type or each individual vehicle, by the district authority where they are manufactured or where the foreign manufacturer's agent resides, before being

[1] More than 100,000 have already been registered in the United Kingdom.

put into circulation. An official certificate is then issued to the manufacturer, a copy of which, in the case of an approved type, must be handed by him, after signature by the police or district authority, to the purchaser with a guarantee, for the correctness of which the manufacturer is responsible, that the vehicle corresponds in every way to the type. On the vehicle subsequently changing hands this certificate must be passed on with it. Transfer of the certificate to any one else is illegal. Subsequent alterations to a vehicle require a further authorisation. The certificate must always be carried and must be produced whenever officially required.

A "trial tax," fixed by the local authority, is levied on the applicant for this certificate, to indemnify the testing and approving committee for their trouble.

Military motor vehicles are exempt from these regulations, as are foreign travellers who are in Austria for a three months' stay only, provided their vehicles have been officially tested and approved in another country which has similar rules and which exercises reciprocity.

Belgium.—The owner must make a declaration to the local authority of the weight and other details of his motor vehicle when he pays his tax (*see* below). He receives in exchange a certificate and number plate. This effects the registration, the fee being 10*d.* (one franc).

France.—Before any motor vehicle can be put into circulation it must be tested, on the request of the manufacturer or owner, by the local officials of the Mines Department of the Ministry of Public Works. This test requires that receptacles, etc., for inflammatory or explosive materials are safely made, that there are no inherent causes of danger or smell, that the driving apparatus, etc., are strong and easily manipulated, and that there are two brakes. For French-made motor vehicles a verification of the type, and for those made abroad an individual test before their being put into circulation, is necessary. The Mines Department then furnishes the manufacturer or owner with a schedule giving certain details as to the motor vehicle. A copy of this schedule must be given by the manufacturer to the buyer, together with a certificate guaranteeing that the vehicle is entirely in conformity with the type indicated, and stating the maximum speed that it can attain on the flat.

A declaration must then be made by the owner to the local Prefect, which must indicate his name and residence and enclose a copy of the Mines Department schedule. In return he receives a Prefectural receipt with a number, and is informed as to whether or not he is liable to carry identification plates.

The responsible officials consider the testing of the car—which is done once and for all and not yearly—as a useful system.

Germany.—When a motor vehicle is to be taken into use the owner must send a written notice to the police authorities of the district in which he lives, giving (*a*) his name and address, (*b*) the name of the firm which

built the vehicle, (*c*) a description of the vehicle, (*d*) the nature of the motor, (*e*) its horse-power, (*f*) the weight of the vehicle, (*g*) (for goods waggons) the greatest load. The last four points must be certified, at the owner's expense, by an officially recognised expert, who must also state that the vehicle satisfies in other respects the requirements of the regulations. In default of this proof the police authorities can require the car to be officially tested at the owner's expense. Any changes as regards the above points must be subsequently notified to the police, and, in the case of a change of address of the owner, the police authorities of the district of the new address must also be notified. The police authorities may, after an official test, furnish local manufacturers with a certificate that a certain type of car meets the proper requirements, and numbered copies of this certificate furnished by a firm to a purchaser will hold good in place of the expert's statement mentioned above.

The owner then receives a registration certificate of the approval and entry on the register of the motor vehicle, and at the same time he is allotted an identification number. This certificate, or an attested copy of it, must always be carried and produced whenever required by the police.

Foreign cars brought into Germany for temporary stay only, on production of a certificate from their national police authorities as to their conforming with the regulations there in force, and stating the points (*a*) to (*f*) mentioned above, may receive a special registration certificate and an oval identification plate from the Customs authorities, which must be returned on leaving Germany. (This mark must be fixed on the rear of the vehicle and must be illuminated at night.)

The police may at any time test or examine any motor vehicle to ascertain that it conforms with the required regulations.

Italy.—Before a motor vehicle is put into circulation it must be tested, at the request of those interested, by the State Civil Engineer Service, for which a fee of 8*s.* 4*d.* (10 *lire*) and the engineer's travelling expenses, etc., are charged.

Detailed instructions are given for the conducting of this test, which generally resembles that in use in France. In certain cases of public service vehicles the test must be repeated yearly or after repairs.

The local Prefect then issues a numbered circulation permit, on which a further note must be made should the motor vehicle subsequently change hands. Owners of motor vehicles coming from abroad must exhibit the similar documents prescribed in their own country to the Italian Customs officials, who then issue to them a special circulation permit.

Netherlands.—Registration is enforced and is effected provincially, but it is gratuitous. The only particulars required are the name and permanent abode of the owner, who receives a letter and number on a certificate, which must be shown whenever legally required. On a motor vehicle changing hands the buyer must register afresh, but owners may transfer their numbers

to any of their cars. Manufacturers have each a number which is common to all their cars. These cars may be used for any purpose.

Foreigners entering the Netherlands need not register for eight days if they have a foreign identification mark, after which they must register with the Ministry of Public Works.

United States.—Registration in some form or other is compulsory in twenty-five of the thirty-six States. The registration, which generally involves stating the name and address of the owner and the make and horse-power of the car or motor cycle, is effected (in all except two States) once and for all, and not yearly, the fee being from one to three dollars. In thirteen of the above States registration fees are unnecessary if the car is registered in another State. In some States cars for hire are also exempt from registration fees.

There appears to be no system of testing motor vehicles in force in any State.

United Kingdom.—Every motor must be registered with the County or Borough Council and a separate number assigned it. A mark indicating such number is to be fixed on the car, in conformity with the regulations of the Local Government Board (Motor Car Act, 1903, s. 2). A letter or group of letters, called the "index mark," has been assigned by the Board to the Council of each County or County Borough. The registration fee is 20*s.*

There is no provision for testing cars.

New Zealand.—Motor cars—like other machinery—must be annually inspected (No. 14).

PROPOSED AMENDMENTS (ROYAL COMMISSION ON MOTOR CARS REPORT), pp. 24-26.

Annual registration to ensure accuracy in the register.[1]

The registering authority to supply the identification plates. These to be of a uniform pattern approved by the Local Government Board.

System of new procedure on registration sketched.

Registering authority to have power to weigh cars.[2]

Government testing of motor-cars—other than public service vehicles—not called for.

Manufacturers' Marks: Improvement suggested in general identification marks by more careful records in a special form on the part of manufacturers. Fee of 5s. per pair of plates when general fee of £3 (R.C.M.C.R., pp. 31-2).[3]

[1] Approved by the Automobilist Clubs in Conference, subject to the question of fees.

[2] Should be limited to the time of registration (the Automobilist Clubs in Conference).

[3] The law as to these marks should be amended so as to give greater freedom to the motor-car industry (*ibid.*).

LICENSING AND EXAMINATION OF DRIVERS.

Austria.—Driving licences are necessary and are only issued to persons over eighteen years of age who have passed the official examination. The latter involves a knowledge of the mechanism of the vehicle and a practical test of ability to drive. A tax is levied as for testing vehicles. The licence, to which a photograph of the applicant is attached, shows which kinds of vehicles he is authorised to drive. The military are examined by their own authorities, and foreign drivers are exempt from these regulations during a stay of three months if they have an official driver's licence from a country with similar regulations and which exercises reciprocity; otherwise they must apply within eight days.

The withdrawal of a licence, which, when necessary, is to be effected by the district or police authority where the holder resides, is either permanent or for a definite period, and in the latter case a fresh examination must be undergone before it is reissued. The licence must always be carried and must be produced whenever officially required.

Belgium.—In Brussels drivers of motor-cars and of motor-cycles with more than two wheels must be eighteen years of age.

Drivers' licences and examinations were abolished in 1900, though they are said to have been satisfactory, and the police would not be sorry to see them reintroduced. It was suggested that the reason for their abolition was that some members of the Legislature were largely interested in the motor-car industry.

Photographs were attached to these licences, but there was no system of endorsing them.

France.—An examination of drivers, conducted under the direction of the local officials of the Mines Department, is enforced. A licence, with the driver's photograph attached, is then issued.

This licence, as well as the Prefectural receipt (*see* above), must be produced whenever officially required.

The principal officials both practically and administratively concerned are not particularly content with the results of the drivers' examination, though the examination itself is said to be as effective as such a test can be. It is supposed to last about fifteen minutes and to include a drive round streets with a *viva voce* examination as to construction, working, and repairs.

The official objections to the examination are that it implies a State responsibility and is too short to show real efficiency, and it is suggested that the English system, with an age limit, and, in addition, a medical certificate of physical ability to drive, might well be as efficient.

The (examination) licences issued by certain foreign countries are usually accepted by the French officials—as, it is stated, are in practice those given by the British Automobile Club.

A Government Departmental Committee (1905) has recommended and the Government proposes :

(1) To institute an age limit for drivers of motor-cars (eighteen years for cars up to 35 H.P. and twenty-one for cars above).

(2) To enforce the production of a medical certificate before a driving licence can be issued.

Germany.—Motor vehicles may only be driven by persons who thoroughly understand their mechanism and handling, and can show a certificate to that effect from an officially recognised expert. If the local police are satisfied with this certificate they then issue a driving licence, which must always be carried and produced whenever officially required.

No one under eighteen years of age may drive a motor vehicle, especially a motor-cycle, except by the consent of the police authorities and of the person's legal representatives. Drivers are responsible that their vehicles are in proper order and that the registration certificate is carried.

Drivers of foreign cars, making a temporary stay in Germany, need not procure a driving licence if they have one issued in their own country and franked by a German authority (German Consul).

In practice the examinations, where enforced, are said to be by no means always effective.

Italy.—A driver's licence (*certificato d'idonéita*) is issued by the local Prefect on the applicant's request, if he has passed the necessary examination and is twenty-one years old.

This examination is chiefly practical and is conducted by the State Civil Engineer Service. The licence, which bears the signature and photograph of the holder, must be shown whenever officially demanded. For drivers of motor vehicles coming from abroad the same modification is made as for registration.

The examination is stated by the officials concerned to be carefully and effectively conducted.

Netherlands.—There is an age limit of eighteen for drivers of motor-cars, and of sixteen for drivers of motor-cycles.

Licences are issued, once and for all and gratuitously, by provincial authorities and give the same particulars as the registration certificate. The licence must be shown whenever legally required. For licensing, the same rule applies to foreigners as that with regard to registration.

United States.—In ten States driving licences are necessary, the fee averaging two dollars. In three of these States the licences are valid for a year only, and in four some examination or evidence of competency is enforced, in some instances for hired drivers only.

United Kingdom.—No person is to drive a motor-car on a public highway unless he is licensed for the purpose, or is employing any person who is not licensed, to drive a car (Motor Car Act, 1903, s. 3).

The County or Borough Council is to grant a licence to drive a motor-

car to any one not under seventeen, who resides in the County or Borough, on payment of a fee of £5. The licence is for twelve months, but is renewable. It must be produced by the motor driver when demanded by a police constable. Penalty for non-production, £5.

There are no provisions for examination of drivers.

As to disqualification for offences, see pp. 146–9.

New Zealand.—There is no licensing of drivers.

PROPOSED AMENDMENTS (R.C.M.C.R.), p. 27.

Government examination of drivers and tests of competency not desirable. Unofficial voluntary examination of motor-car drivers, with certificates of competency, as by Automobile Club of Great Britain and Ireland, commended.

Driver to carry his licence with him as his sole title to drive, but if by inadvertence he has not, to be exempt from penalty, if he gives his true name and address to police constable and produces licence within three days (p. 29).

SPEED LIMITS.

Austria.—The driver must always be master of his speed. In addition the following limits are laid down :—In enclosed (inhabited) places, nine miles (fifteen kils.) ; in the open country, twenty-eight miles (forty-five kils.) ; in fog, at cross, narrow or winding roads, gateways, bridges, among close traffic, or in crowds, four miles (six kils.) an hour. Local authorities may not reduce these limits.

Special sanction is required for holding races.

Belgium.—Considerable difficulty is still experienced by the police in enforcing the speed limit in "inhabited places" (*agglomérations*), and it is stated to be exceeded very frequently.

In some towns the local authorities specially limit speed at certain places or close particular streets to certain classes of motor traffic.

Races are stated to be much less general than they were, and much less popular, their novelty having worn off.

France.—The speed limits are, in the open country, eighteen and a half miles (thirty kils.) an hour ; in inhabited places (*agglomérations*), twelve and a half miles (twenty kils.) an hour ; in narrow or crowded places, four miles (six kils.) an hour. The driver must also slow down or stop when his vehicle may cause any accident, disorder, or nuisance.

Mayors can reduce the speed limit in inhabited places, with the concurrence of the Prefect, but not to less than seven and a half miles (twelve kils.) an hour.

Special regulations exist for races.

The speed limits are continually exceeded, but more so in the country than in Paris. It is considered that the limitation of plates to vehicles

that can go at a speed greater than eighteen and a half miles an hour is to some extent responsible for this, as motorists consider this recognition of their possible speed as a permission to travel at it. There seems to be no suggestion in official circles of altering the present speed limit.

Races are now less general than they were. Manufacturers are said to find them expensive and not particularly beneficial to the industry. The public still take a sporting interest in them.

Germany.—Within enclosed places the speed of a motor vehicle must never exceed the pace of a horse trotting out—about nine miles an hour. Elsewhere, if there is a clear view, speed may be increased, so long as the driver remains capable of carrying out his obligations satisfactorily under all circumstances. On all occasions when the view is restricted owing to darkness, fog, cross roads or curves, narrow bridges or gates, slippery roads or much traffic, driving must be so slow that the vehicle can, if necessary, be pulled up within sixteen feet.

When turning to the right a sharp curve must be made, when to the left a wide one.

Whenever called upon to do so by the police, or when it is necessary owing to the frightening of horses or other animals, the driver must stop his car, and when an accident has taken place in connection with his car he must also render help.

Whenever it appears necessary, owing to the condition of the roads or traffic, a definite speed limit may be imposed by general or special police regulations. Notices[1] to this effect must be posted at the places concerned.

Racing is prohibited except under special permission and regulations.

Speed limits are usually only imposed in inhabited places and are conventional (*i.e.* equal to the pace of a horse trotting or walking). They are occasionally exceeded. There are some "police controls" in the vicinity of Berlin.

It is said that races are decreasing in frequency and popularity.

Italy.—In the open country a speed limit of twenty-five miles (forty kils.) an hour is laid down, and in inhabited places seven and a half miles (twelve kils.) an hour. At night nine miles (fifteen kils.) an hour is the speed limit in open country, but this may be exceeded when going along a straight road with a clear view.

The above limits may be modified by municipal authorities, and speed must also be reduced as may be necessary at cross roads, sharp curves or descents, in crowds or traffic, and whenever there is any danger of accident or alarm to any person or animal.

Public vehicles for urgency and salvage services (fire engines, etc.) are exempt from the above limits.

In practice the speed limits are said to be generally observed, though in the country the rate is sometimes brought up to thirty-eight miles (sixty

[1] The notice in question is printed in German, English, and French.

kils.) an hour. Shepherds and peasants, however, complain that sheep and cattle are run over by motor-cars driven at a furious speed.

Races are not common, though the Government is said to be disposed to encourage them.

Netherlands.—No speed limit exists on main roads, but local authorities can impose limits in built-up neighbourhoods on roads other than main roads.

These limits must be publicly notified and indicated by a Government system of notice boards. The Government has power to abrogate such action of local authorities, but not to modify it.

Races are forbidden without a special authorisation, and are then only allowed for commercial purposes.

The speed limit under the old law was twelve and a half miles an hour, and was continually exceeded.

In some cases police controls were set.

The speed limit advocated by the Government in the new Bill was one of twenty-five miles an hour, but by a majority of two votes in a House of sixty-two this was amended to no limit.

The law as it now stands trusts entirely to a very simple "common danger" clause, *i.e.* "driving in a way or at a speed such that the freedom or security of the traffic on the road is compromised or endangered."

Races are rare and are not very popular.

United States.—Thirty-three States have speed limits, in certain places, thirty have maximum speed limits, and twenty-four have the "common danger clause," or something analogous to it.

Of the thirty-three States having speed limits, one divides them into four, fourteen into three, and twelve into two categories. These categories vary, but are usually "cross roads, sharp curves, descents," "closely built-up neighbourhoods," and "outside towns and villages."

The maximum high-speed limits in three States (Michigan, Minnesota, and Wisconsin) is twenty-five miles an hour; in two States twenty-four miles an hour; in thirteen States twenty miles an hour; in ten States, fifteen miles an hour; in one State (Maryland) ten miles an hour; in one State (Missouri) nine miles an hour (whenever so required by any other vehicle); and in one State (Alabama) eight miles an hour. The average maximum high-speed limit for those States having one is thus about eighteen and a half miles an hour.

The maximum low-speed limits (at cross roads, in built-up neighbourhoods, etc.) vary from four to twelve miles an hour. In eleven States local authorities are prohibited from modifying speed limits. In New Jersey an experiment was recently made of having only one (high-speed) maximum limit instead of three as heretofore, but it was presumably found unsuccessful as a system of four separate limits has now been applied.

In California "scorching" is very prevalent and it is stated that the

law might be more strongly enforced. Out of twenty-seven arrests for fast driving in San Francisco in one year, twenty-two were dismissed. Accidents are said to be numerous.

In Illinois (Chicago) the police do no interfere with fast driving if there is little traffic on the road.

In Maine, Maryland, Massachusetts, and Virginia, the speed limit is enforced as well as the police are able.

In Pennsylvania and Tennessee the speed limits are not very strictly observed, nor are proceedings against motorists frequent. In Delaware and Rhode Island the speed limits are not always kept to.

In Oregon and Washington it is doubtful if the speed limits in the open country are enforced.

In Ohio automobilists, bicyclists, and equestrians are required on meeting vehicles to leave two-thirds of the road free for such vehicles.

United Kingdom.—A person is not under any circumstances to drive a motor-car on a public highway at a speed exceeding twenty miles an hour. The Local Government may on the application of the local authority limit speed in certain areas or "controls" to ten miles an hour (Motor Car Act, 1903, s. 9 (1)). These "controls" are to be indicated by notice boards (s. 10).

Driving a motor-car on a public highway recklessly or negligently or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition, and use of the highway and to the amount of traffic which actually is at the time or which might reasonably be expected to be on the highway, is an offence (Motor Car Act, 1903, s. 1).

The penalty for excessive speed is progressive; £10 for a first offence, £20 for a second, and £50 for a third. There is to be no conviction merely on the opinion of one witness (s. 9 (1)).

British Empire other than U. K.

Ontario.—The speed limit is ten miles an hour in any city, town, or village; outside fifteen miles speed is to be decreased at intersecting roads or on bridges (1903, s. 27).

Quebec.—An automobile is not to be driven. The speed limit is six miles an hour within the limits of a city, town, or village; fifteen miles in any other municipality. A driver must slacken speed if signalled by lifting of the hand of an approaching rider or driver (1904, No. 30). Penalty $20, in default imprisonment (one month).

British Columbia.—The speed limits are the same as in Ontario and Quebec (1903, No. 41).

Tasmania.—The maximum speed on a public highway is fourteen miles an hour (1900, No. 35).

New Zealand.—There is no speed limit. Motors are not to travel "at a greater speed than is reasonable" (1904, No. 14).

New Brunswick.—Automobiles must not go at a greater speed than is reasonable having regard to the traffic, or in any event at more than a mile in four minutes outside towns and villages (1905, No. 6).

Proposed Amendments (R.C.M.C.R., p. 12).

To repeal the twenty-mile speed limit and rely on the provision in the Motor Car Act, s. 1, against negligent or reckless driving or driving to the common danger, adding an express provision against racing on a highway.[1] *The penalty on conviction to be made heavy.*

Local authority to have power to fix danger signals at such points as they think fit. In such cases it to be an offence to travel at a speed exceeding twelve miles an hour.[2]

Heavy Motors and Tractions (two to three tons) with non-resilient tyres, speed not to exceed five miles an hour.

IDENTIFICATION.

Austria.—Identification marks for motor vehicles are enforced very much on the English system, and consist of letters and numbers. They must be issued and registered by the local authority, carried in front and rear, be of a fixed size and legible, and be illuminated at night. Side or back trailers to motor cycles must also carry their mark. Manufacturers can be allotted a number of identification marks, which are not confined to special vehicles.

Permanent change of residence involves, on the part of the owner, notification to the officials of his old and new district and a change of identification mark.

Motor vehicles coming from foreign countries receive from the Customs officials special identification marks, marked with a red Z, which are valid for three months. These may be made of strong paper.

Belgium.—All motor vehicles must carry a number plate in front (that in rear has been recently ruled illegal by the Court of Cassation). The system of identification is analogous to that in use in England.

Identification is rendered much less easy than it might be by the recent decision that the back plate was not legally necessary under the existing Act. Illumination is not enforced during the night.

It is understood that the amendments being considered by the Belgian Government include:

1. The enforced carrying of a back plate and its illumination, as well as that of the front plate, at night.

France.—If a motor vehicle can attain a higher speed than eighteen

[1] Approved by the Automobilist Clubs in Conference.

[2] The Automobilist Clubs are of opinion that no speed limit of this kind should be fixed without the approval of the Local Government Board.

and a half miles (thirty kils.) on the flat it must carry two identification plates (with letters and numbers), one in front and one behind. These must be fixed in a certain way and must be illuminated by night as clearly as by day. The numbers to correspond to those in the Prefect's register.

Every car must bear on it in legible characters (1) the name of the maker, the type and the number of the type series given by the Mines Department, and (2) the name and address of the owner. (1) applies also to trailers.

In effect the system is not always satisfactory, as the plates are sometimes illegible or purposely obscured, and drivers occasionally refuse to stop when required to do so.

The system of motor vehicles capable of going at no higher speed than eighteen and a half miles an hour on the flat, not carrying plates, appears to give no cause for complaint as regards identification.

A Government Departmental Committee (1905) has recommended, and the Government proposes to compel each car to have legibly shown on it the name and address of its owner and (if necessary) his number, as well as the name of the maker, type, etc., of the car.

Germany.—The identification system is by means of letters and numbers, a corresponding register being kept by the local police authorities.

Every motor vehicle must carry two identification marks, one in front and one behind, which must always be in a legible position. The front mark must be not less than eight, and the rear mark not less than twenty inches from the ground. These marks, which must bear the official stamp of the police authorities, must be painted or firmly fixed as plates on to the car. The rear mark, which may form part of a lamp, must be illuminated at night. The height of the letters or figures for motor-cars is to be three inches, and for motor-cycles four inches, with other measurements in proportion. The loss or damage of an identification mark must be at once notified to the issuing authorities. To carry several different marks is prohibited.

Every motor vehicle must, in addition, carry a plate on which is shown the name of the firm which built the vehicle, the horse-power of the motor and the weight of the vehicle.

There has hitherto been no uniform system of numbering or registering motor-cars.

Italy.—Motor-cars must carry in front and behind white plates, which bear in red the number of the province and in black that of the circulation permit. These plates must be of approved pattern, fixed in a certain way, and must bear the mark of the issuing authority. The back number must be illuminated by the rear light at night.

Manufacturers' cars out for trial need only have a special authorisation from the local Prefect.

In each Prefecture a register of the issue of circulation permits is kept, in which are noted, *inter alia*, the various changes of ownership of a motor vehicle.

The system is said to work well, the size of the numbers (three and a half inches) being large enough to be easily seen.

Netherlands.—The system resembles that in force in England.

One number plate must be carried in front and one behind, but only the latter need be illuminated at night.

The system has been found generally satisfactory, and has been continued.

For number plates, white letters on blue are alone now legal. The plates are about the same size as those used in England, those for motor-cycles being half size.

No special height from the ground is laid down for number plates.

United States.—Twenty-four States have identification systems in connection with the registration numbers. These systems are very much on the same basis as that in force in England. In some cases, however, the number is only shown on one place on the car, and in some States numbers are not illuminated at night. On the transfer of a car to another owner a notification must, as a rule, be made to the registering authority.

In eleven States manufacturers have either a general mark or are exempt from carrying plates.

In Illinois, Maine, Massachusetts, and Vermont, the identification system is not found to work very satisfactorily at night, the numbers in the last named three States being placed on the front or side of the lamps.

The system in California, Oregon, and Washington appears to work well, but has only been in force a short time. In New Jersey and Rhode Island it is also satisfactory.

United Kingdom.—The Local Government Board requires two plates, one to be carried in front, the other at the back of the car, in an upright position and easily distinguishable from in front or behind.

Letters and figures must be $3\frac{1}{2}$ inches high.

At night-time the back plate of every motor-car used on a public highway is to be illuminated (Motor Car Act, 1903, s. 7, County and Borough Regulations, First Schedule, Art. 1).

Proposed Amendments (R.C.M.C.R. pp. 30-31).

A primary necessity of control is that index plates should be easily legible. Regulations should provide that the bottom of the index plate shall in no case be less than 2 feet 6 inches from the ground and so fixed that no part of the car shall overhang so as to overshadow it and that there shall be a clear and uninterrupted view of every letter and figure on the plate from in front and from behind. Dimensions suggested—height of letters 4 inches, width $2\frac{5}{8}$ inches. For night driving, a bright illuminating lamp concentrated

on the index plate. The registering authorities to supply the identification plates.[1] *These to be of a uniform pattern approved by Local Government Board.*

LAMPS, HORNS, ETC., REGULATIONS AS TO.

LAMPS.

France.—Use of Phares (dazzling lights) by automobiles forbidden in Paris.

Italy.—Every motor must carry two lamps in front and one behind.

United Kingdom.—Single front lamp only required.

Proposed Amendment.

Every motor-car should be required to carry two front lamps, right and left[2] (p. 39).

Question of brilliancy of light left unanswered.

HORNS.

Proposed Amendment.

Excessive noise by horns, sirens, or steam whistles to constitute an offence (p. 38).

OFFENCES OF PENALTIES AND PROCEDURE.

Austria.—Penalties are maintained as before, *i.e.*, £8 6*s.* 8*d.* (200 *krone*) maximum fine or fourteen days' imprisonment, at the discretion of the Court. The licence can be withdrawn either permanently or temporarily, if the holder is condemned to punishment for endangering human life or is punished for transgressing the regulations in such a way as to show his unreliability as a driver.

There is said to be no particular severity on the part of the police, nor are there "police controls." The police have no material interest in convictions. The fines inflicted are small, £2 being considered high. There is no increased penalty for repeated offences. On the local benches, where the judges are paid State officials, there is said to be no feeling against motorists and appeals are not usual.

Belgium.—Notice of prosecution must be given within forty-eight hours. Drivers of overladen motor vehicles who refuse to discharge the necessary portion of their loads can have their vehicles impounded for the time being. This can also be done to any car when a crime has been committed. Persons civilly responsible for damages are also responsible for the fines levied.

[1] Declared unnecessary by the Automobilist Clubs in Conference.

[2] Approved by the Automobilist Clubs. Regulations as to lighting should be extended to all classes of road vehicles.

Fines for contravention of the law are from 4*s.* to £8 (5 to 200 francs), with or without one to eight days' imprisonment. In case offences are repeated within a year, or are committed at night, double penalties are imposed.

Dilatory or fraudulent declarations are punished by a fine of twice the tax due and by imprisonment from one to eight days. Illegal use or obtaining of identification plates is also punishable.

In certain cases one-third of the fine goes to the police official who gives information of the contravention.

Motorists were formerly "*impitoyablement poursuivis*" by the police, but latterly have become "*beaucoup plus sages.*" The police do not now "*cherchent des procès,*" and nearly always warn an offender before summoning him. There are still, however, a considerable number of police prosecutions (about 700 in Brussels in the thirteen months from July, 1904, to August, 1905, of which nearly two-thirds were for exceeding the speed limit).

"Police controls" are rare. They are timed, when used, by means of an ordinary watch.

The law is said to be rigorously applied, though the usual fine is only £1. Appeals are rare, and if unsuccessful may result in increased penalties.

The judges of first instance are all paid State officials, and it is said that there is very little feeling on the bench, local or otherwise, as to motor-cars.

France.—After two contraventions within a year the driving licence can be withdrawn by an order of the Prefect and at the advice of the Mines Department, the holder being heard in defence. Other penalties are as follows:

For exceeding the speed limit, driving dangerously, etc., fines from 6 to 10 francs, with or without three days' imprisonment.

For driving without a licence, no light, failure to register, etc., fines from 1 to 5 francs; in case of a repeated offence, three days' imprisonment.

A right of appeal lies when the fine exceeds 5 francs or when imprisonment has been given.

Exceeding the speed limit is the most common offence. In Paris the police are said to be rigorous; in the provinces very much less so. "Police controls" are not usual.

Endorsements are not made, but withdrawals of licences are speedy and frequent. Fines are light, but imprisonment is also occasionally given. Appeals are not very numerous. In the provinces there has been, and still is, a certain feeling on the local benches against motorists. Convictions, as a rule, result on prosecutions, but the police have no special interest in securing them.

The Prefect of Police in Paris has lately had a certain number of his men trained as motor-car drivers, and these are specially allocated to supervising motor traffic.

Germany.—Any offence against the regulations may be punished by a fine up to 60 marks, or by imprisonment up to fourteen days. The police may also temporarily suspend, or altogether withdraw, the driving licence from improper persons, especially from those who have broken the driving regulations. Specially heavy fines may be inflicted for revenue offences.

It is stated that the police enforce the law, though they are not very severe. The fines imposed are very light, 15*s.* being the usual, and 30*s.* a high fine.

There is said to be no feeling on the bench against motorists—the magistrates being all paid State officials.

Italy.—Notice of prosecution must be given within eleven days.

Fines are imposed for smaller offences (*e.g.* lights out, using wrong signal) of from 2 to 10 *lire*, for greater ones of from 10 to 100 *lire*. These fines can be doubled in case of the offence being repeated.

For offences with regard to taxation a higher scale, rising to 500 *lire*, is imposed.

The driving licence is suspended for six months if the holder has had three collisions in a year. It is withdrawn if he has by negligence caused the death of, or serious injury to, any person.

Excess of speed is the most ordinary offence.

The police are stated generally to enforce the law, though they are not rigorous, nor are "police controls" common. The policeman concerned in a conviction obtains half the fine, this system being apparently necessary in order to ensure the requisite zeal.

Complaints are made that procedure is slow, and that the necessary notice of prosecution is not given in the specified time.

Licences are not endorsed and are not withdrawn for exceeding the speed limit. The fines are light—about 20 to 30 *lire*, as a rule, and they are not often doubled. Appeals are rare. There is said to be no feeling on the bench against motorists.

Netherlands.—If any owner or any one in the position of an owner does not take the necessary care to prevent his driver contravening the law, he may be made jointly responsible with him.

There is no limit of time for notice of prosecution.

For the more serious offences, which include driving to the common danger, or on a closed road, or without a number that is clearly visible, or holding or partaking in a motor race, a maximum fine of 150 florins (£12 10*s.*) or thirty days' imprisonment can be imposed. In addition the driving licence may be withdrawn for any period up to a year for any of the above offences (with the exception of being without a number plate that is clearly visible). In these cases a public notification of the withdrawal of the licence is made. For other offences smaller punishments are imposed.

An appeal always lies.

The usual offence under the old law was exceeding the speed limit. Police action was local and varied.

The maximum penalty was 50 florins (about £4), and 25 florins was considered a high fine.

In some cases it is said that the magistrates (State officials) were inclined to be prejudiced against motorists.

There was, and is, no system of endorsement of licences.

United States.—The penalties enforced are: in ten States fines, and in the remainder fines and imprisonment. In several States the car can also be impounded pending payment of the fine or damages. The maximum fines for contraventions vary from 5 to 1,000 dollars (Missouri). Imprisonment can be given, sometimes with and sometimes instead of a fine. The maximum terms are from ten days to six months (Missouri). In thirteen States second offences are necessarily more heavily punished.

In four States the driving licence can be suspended. In Illinois, in a civil action for damages by a motor-car, a *primâ facie* case is made out by the plaintiff if excess of speed (fifteen miles limit) can be proved.

In Massachusetts the Highway Commission now keeps a record of every motor-car offence committed in the State.

United Kingdom. *Special Penalties.*—Failure by a driver to produce a licence when demanded by a police constable—£5 (s. 34). Exceeding the twenty-mile or ten-mile limit—£10, first offence; £20, second; £50, third (s. 9). Refusing to stop or give address in case of accident, £10, first offence; £20, second; £50, third (s. 6).

General Penalties.—Fine not exceeding £20; second offence, £50, or imprisonment not exceeding three months. Suspension of driver's licence or disqualification.

Proposed Amendments (R.C.M.C.R., p. 36).

Motorists are primâ facie *persons lawfully using the highways, and special offences should only be created where necessary in view of the great speed of motors and their power of escape.*

The following should be made offences:

1. *Racing on a highway* (p. 12).
2. *Exceeding a speed of twelve miles an hour in special places* (p. 12).
3. *Not stopping in certain cases*[1] (p. 14).
4. *Forging identification plates* (p. 24).
5. *Failing to notify change of ownership* (p. 25).
6. *False statement as to weight of car* (p. 25).
7. *False statement as to licence* (p. 29).

[1] The Automobilist Clubs in Conference are of opinion that the duty of stopping in case of damage or accident should be enlarged and made more explicit; also that greater facilities should be given for ascertaining the name and address of motorists and of any user of the highway.

8. *Default in recording the use of a manufacturer's mark* (p. 32).
9. *Causing or permitting emission of smoke or vapour, so as to amount to a public annoyance* (p. 37).
10. *Production of excessive noise or vibration* (*including noise by horns, sirens, etc.*[1]) (pp. 37, 38).

Indorsement of licence to be in discretion of Court,[2] *except where the offence is for reckless or negligent driving or for being drunk when driving or in charge of a car* (p. 36).

Three convictions for reckless or negligent driving within twelve months to disqualify from holding a licence for twelve months.

First conviction for being drunk[3] *when driving or in charge of a car to render offender liable to fine of £10 or one month's imprisonment: second conviction to deprivation of licence for such period as Court make fit in addition to other penalties.*

Commercial responsibility of owners for acts of servants; civil responsibility at common law generally sufficient, but owner or hirer should be liable equally with servant to fine or imprisonment, withdrawal of licence, or suspension of registration of car where shown to have been abetting the driver in offences under the Motor Car Act, 1903, *s.* 1 (*reckless or negligent driving*[4]).

Right of appeal to be given wherever conviction endorsed upon licence or a fine of over 20s. inflicted.[5]

TAXATION.

Austria.—No taxes are levied on motor vehicles beyond the local "trial taxes" already alluded to. In the Duchy of Salzburg, however, by a law already in force, a yearly tax of from £4 to £8 is imposed on public-service vehicles, a tax of 25*s.* on drivers, and a local tax, not exceeding 25*s.*, on motor-cycles. The "trial taxes" go to local revenue, and fines to the local Poor Funds.

Belgium.—A provincial tax (which is uniform throughout Belgium) is imposed annually as follows:

For motor-cycles, 16*s.* 8*d.*

For motor-cars weighing half a ton and under, £2.

For motor-cars weighing from half a ton to 1 ton, £3.

For motor-cars weighing over 1 ton, £4.

Government motor vehicles, motor-lorries for the transport of merchandise, motor-cabs, and motor vehicles on trial by the manufacturers, or belonging

[1] "Not of a momentary description" (The Automobilist Clubs).

[2] This is strongly approved by the Automobilist Club.

[3] The Automobilist Clubs in Conference recommend special penalty for this.

[4] Assented to by the Automobilist Clubs in Conference.

[5] There should be a right of appeal *in all cases* to prevent magistrates defeating the right of appeal by a fine not up to the appealable amount (The Automobilist Clubs).

to foreigners who are in Belgium for less than three months, are exempt from these taxes.

Taxes go to the provinces and fines to the State.

The monies obtained from the provincial taxes for registration certificates are, in fact, applied by the provincial treasuries to road improvement, though this is not obligatory. Monies resulting from fines in no way benefit the provincial administration. The imposition of fines is thus said to lead to no abuses.

France.—Taxation is as follows:

Every owner of a motor vehicle must declare the same, indicating its horse-power, to the mayor of his domicile, at the beginning of each year. He then pays:

	For a vehicle with one or two seats.	For a vehicle with more than two seats.
In Paris	50 francs	90 francs
In towns of over 40,000 inhabitants .	40 „	75 „
In towns of from 20,000 to 40,000 inhabitants	30 „	60 „
In towns of from 10,000 to 20,000 inhabitants	25 „	50 „
In towns of below 10,000 inhabitants .	20 „	40 „

with, in addition, a tax of 5 francs per each horse-power or fraction thereof.

Motor vehicles which are exclusively for sale or hire are exempted from these taxes, as are trade and public-service vehicles.

Taxes and fines go to the State.

The present system of taxation, which is based partly on horse-power, is not considered by the State engineers responsible for the taxable declarations as satisfactory. For though in theory it is equitable, in fact the difficulty of distinguishing between "indicated" and "effective" horse-power is found to be considerable, and the result is that the Revenue is not infrequently the loser. It is suggested that taxation based on weight and number of seats is the most practical.

No special use is made of taxes or fines.

Germany.—There is not as yet any direct taxation on motor-cars as such. The following are the yearly taxes proposed by the Imperial Stamp Law of June, 1906:

	Marks.				Marks.
Motor-cycles	10				
Motor-cars under 6 H.P. .	25	and, in addition, for every H.P. or fraction of a H.P.			2
Motor-cars from 6 to 10 H.P. .	50	ditto	ditto	ditto	
Motor-cars from 10 to 25 H.P.	100	ditto	ditto	ditto	5
Motor-cars of over 25 H.P. .	150	ditto	ditto	ditto	10

When motor vehicles are used for a period of not more than four months

only half the above rates are payable. Government, trade, and public-service motor-car vehicles are to be exempt from these taxes.

The taxes on foreign motor vehicles are to be as follows :

	Marks.
Foreign motor-cycles in Germany for 1 month only in a year	3
„ „ cars „ „ 5 days „ „	15
„ „ „ „ „ 1 month „ „	40

Registration fees up to a certain limit may also be imposed locally by State authorities. Those for foreign motor vehicles receiving the special oval mark are 6 marks for motor-cars and 3 marks for motor-cycles.

In some instances local abuses in connection with the levying of fines are said to have arisen.

Italy.—The yearly scale of taxation, as approved by the Law of 1905, is as follows :

	Lire.
Motor-cycles of up to 4 H.P. (fixed standard)	24
„ „ of above 4 „	36
Private motor-cars of up to 6 „	70
„ „ „ 12 „	100
„ „ „ 16 „	120
„ „ „ 24 „	150
„ „ above 24 „ 150 lire and in addition per each H.P. over 24	3
Public-service motor vehicles with up to 4 seats	36
„ „ „ with up to 10 seats	60
„ „ „ with over 10 seats and those for towing trailers	100
„ „ „ which are merely trailers	50

Trade vehicles according to H.P. at half the scale of that for private motor-cars.

Government motor vehicles, and those coming from abroad for a stay of three months only, are exempt from this taxation.

One-half of these taxes goes to the State and one-half to the Commune in which the motor-car owner resides.

All motor vehicles have also to carry a Government metal plaque indicating the tax they have paid.

The basis of taxation has recently been altered (*see* above). It was formerly levied by weight and was collected by local authorities.

It is said that in some municipalities there is an endeavour to abuse the fine system.

Netherlands.—The only tax paid at present by motor vehicles is the ordinary carriage or cycle tax.

This tax, as do all fines, goes directly to the State Exchequer, and is not allocated to any specific object.

A Bill is before the Chambers to impose a tax on motor vehicles. The basis of taxation is to be the number of cylinders or cylinder capacity.

Trade vehicles are to be taxed at a lower scale than pleasure vehicles.

United States.—No information has been received as to any special State taxation of motor vehicles beyond the registration and licensing fees already alluded to. There are, however, extra local taxes on motor-cars in some cities. In certain States all fines and fees go the use of the roads and in Ohio fines go to the Schools Funds.

United Kingdom.—Two sets of duties are payable on motor-cars *in England.*

1. A duty of £2 2*s.* when weight of car exceeds 1 ton, but is under 2 tons, £3 3*s.* when over 2 tons (Locomotives of Highway Act, 1896, s. 8).
2. The ordinary carriage duty of 15*s.* (Customs and Inland R. A., 1888, s. 4. See *Barlow and Hicks Mechanical Traction on Highways*, p. 94). The fee for a licence is 20*s.*

A duty 15*s.* per annum is payable for a driver or chauffeur, he being a male servant "under the Inland Revenue Acts, 1869, 1875.

PROPOSED AMENDMENTS (R.C.M.C.R, p. 40).

The following scale of taxation is suggested :

Motor-cars under 12 cwt. (unladen)	£2	2*s.*	*a year.*
„ *over 12 cwt., but under 15 cwt. (unladen)* . .	3	3	„
„ *over 15 cwt., but under 25 cwt. (unladen)* . .	5	5	„
„ *over 25 cwt. (unladen)*	8	8	„

Trade and public-service motor vehicles to pay one-half of the above.

The revenue derived from the taxation of motor-cars to be devoted to the improvement of roads[1] (p. 22).

MOTOR-CYCLES.

Austria.—Motor-cycles must carry one mark which need not be illuminated at night, owing to technical difficulties.

Belgium.—A distinction is made between motor-cycles with two wheels (*motocyclettes*) and those with more than two (*motocycles*). The former are exempt from the Brussels Police Regulations with regard to motors.

France.—There is a special examination for drivers of motor-cycles weighing less than 3 cwt.

Germany.—Motor-cycles need only carry one brake and one lamp, and, if so sanctioned by the local police, do not require a second identification plate or the illumination of the rear plate at night.

[1] This recommendation is approved by the Automobilist Clubs in Conference, a central department to direct the allocation of the fund among the various local authorities.

Italy.—The regulations for motors apply generally, except that the test fee is only 5 *lire*, a front lamp and a back plate only are carried, and the horn must be high-toned. The age limit is eighteen.

Netherlands.—Motor-cycles need only carry one number plate and one lamp. No permit is necessary for them to tow a small trailer.

United States.—Motor-cycles are usually included in these Laws and are considered as motor-cars.

United Kingdom.—A licence for a motor-cycle may be granted to any one over 14 years of age (Motor Car Act, 1903, s. 3 [5]). The registration fee for a motor-cycle is 5*s*.

No duty is payable under the Locomotives on Highway Act, 1896, and a motor-cycle unless its weight exceeds a ton.

In case of motor-bicycles and bicycles not exceeding 3 cwt. (unladen), the dimensions of the index plates are halved. The plates need not be rectangular (Local Government Board, Addendum to Motor Car Act, 1903).

PROPOSED AMENDMENTS (R.C.M.C.R., p. 351).

Motor-cycle should be defined as a motor-car designed to travel on not more than three wheels, and weighing not more than 3 cwt. (unladen).

Should be registered annually at fee of 1s. (p. 25).

Dimension for letters and figures on index plates: height, two and a half inches; width, one and three-quarter inch (p. 30).

Taxation—to pay £1 a year (p. 40).

ROADS AND DUST.

Austria.—The dust question has not been studied by the Government.

Belgium.—The dust question is being specially studied in the *Département des Ponts et Chaussées* and a report is shortly expected.

France.—The dust question has been studied, and it is stated that speed is considered to be the principal element in its cause. Various experiments have been made on roads with tar, westrumite, and similar substances. (*See also* Report on Road Construction.)

Germany.—The dust question has not been studied officially.

Italy.—The dust question has not been specially studied by the Government.

Netherlands.—No Government study to obviate these evils has been undertaken, though some local authorities have laid down westrumite and similar materials experimentally. (*See also* Report on Road Construction.)

United States.—In California the principal highways are treated with asphaltic oil, which is found very satisfactory for road-making and dust-laying.

In New Jersey some road authorities rely on making road surfaces of very hard stone and on plentiful watering to prevent dust.

United Kingdom.—The dust nuisance is a real one, but the annoyance is slight where the speed of a car does not exceed ten miles an hour (pp. 15-17).

Amendments Proposed.

The remedy must be sought in the treatment of roads. The best type of macadam will probably make the cheapest and best roads for all kinds of traffic. Tarring as in France may be recommended for main roads passing through towns and villages.[1] *But data are as yet wanting to determine what will make the best highway for dustlessness and durability. More money must certainly be spent on roads.*

The revenue from motor-cars should be dedicated to the improvement of the roads (p. 22).

The dust nuisance is, in connection with motor, the real problem to be solved.

[1] A most instructive Report by Captain C. Bigham on C.M.G. on the Administrative Construction, and Maintenance of certain classes of roads in France, the Netherlands, and Germany is appended to the Report.

THE FATE OF THE ROMAN-DUTCH LAW IN THE BRITISH COLONIES.[1]

The Right Hon. Arthur Cohen, K.C., on Roman-Dutch Law.—The growing interest in Roman-Dutch law was strikingly shown in the distinguished gathering which assembled at University College on November 25, to hear Mr. Lee's inaugural lecture. The chair was taken by the Right Hon. Arthur Cohen, K.C., whose large experience in appeals to the Privy Council peculiarly fitted him to preside on such an occasion. In the course of a short address, commending the study of the Roman-Dutch system to English lawyers, he said:

All those colonies in which Roman-Dutch law prevails have been acquired by conquest or cession, and as there exist, or will in a very short time exist, Legislative Assemblies in all those Colonies, the Roman-Dutch law will continue in force unless and until it is abrogated by the colonial Legislature, or by the Imperial Parliament. It is certain that no abrogation or modification of Roman-Dutch law will proceed from the Imperial Parliament. It follows that the continued existence of Roman-Dutch law will depend entirely on the Legislatures of the Colonies, and therefore ultimately on the public opinion in those Colonies. Now, there is no reason to suppose that public opinion in the Colonies will be in favour of introducing the technicalities of English common law or the intricacies of English real property law.

As regards English law of real property, it was many years ago a wonderfully ingenious scheme devised by some of the subtlest intellects in order to escape from and evade the fetters and restrictions imposed by the rigid rules of the feudal system. The scheme was gradually framed by conveyancers and judges with infinite skill and acumen, and its logical consistency was maintained and developed by men like Preston and Fearne. It was then a system certainly worth studying were it only as an intellectual exercise. But during the last hundred years the law of real property has been entirely disfigured, though its utility has been improved, by innumerable Acts of Parliament, which have taken away from the law all the symmetry and elegance it once had; so that it is now a collection of numberless rules, the study of which can confer no intellectual benefit whatever. In truth, no sane person who could help it would now devote any time to mastering the English law of real property.

Again, an English lawyer who only pays respect to Blackstone and the dicta of ancient judges is so apt to assume English common law to be in all respects the perfection of reason, that a study of some other legal system is absolutely necessary in order to prevent him from becoming unprogressive and narrow-minded. For example, I venture to assert that no one can have a grasp of the true principles of the law of contract who has not studied the Digest and Savigny, or those books which explain and set forth the views expounded in those great works.

Let me give an illustration. In *Molyneux* v. *Natal Land Company* (1905, A.C. 555) the Privy Council held that by the Roman-Dutch Law, which prevails in Natal, a mortgage bond passed by virtue of a power of attorney executed by

[1] An Inaugural Lecture delivered at University College, London, October, 1906, by R. W. Lee, Esq., Professor of Roman-Dutch Law in the University of London.

insane person is not legally enforceable where it appears that the mortgagor derived no benefit from the bond, and that the mortgagee had no knowledge of the insanity. According to the authorities of that law, a contract made by an insane person is void, and not voidable only. Where moneys so advanced are devoted to purposes beneficial to the insane person, the Roman-Dutch law recognises the equity of allowing them to be recovered as moneys expended in good faith by his *negotiorum gestor*. [Mr. Cohen contrasted the Roman-Dutch law with the English law on this point, citing also a passage from the judgment at p. 563, and continued:] Surely the Roman-Dutch law is in this respect far more reasonable and philosophical than the English common law!

I could easily give many other instances in which the principles of the Roman-Dutch law are intrinsically preferable to those of the English common law, and certainly far better adapted to the state of the Colonies. There is therefore, I hope and believe, no probability that the Legislatures of those Colonies will substitute English common law for Roman-Dutch law, although it is extremely likely that a great deal of English statute law relating to mercantile contracts, company law, and shipping law will be adopted.

What we must expect is this: there will in all probability gradually grow up a system compounded of Roman-Dutch law and English law and perhaps Scotch law; therefore it will be absolutely necessary for those who are engaged in the legal profession in the Colonies to understand the principles of Roman-Dutch law which most fortunately have been expounded in so masterly a manner by jurists of such world-wide fame as Grotius and Voet.

We hear at the present day much about Imperialism and the duty of maintaining and consolidating our vast Empire. Many schemes have been foreshadowed with this object in view—schemes which appear to some practicable, to others impracticable, to some wise, to others unwise. But this I venture to assert without hesitation, that those who are true Imperialists and who wish London to be the real metropolis of our great Empire will hail with pleasure and will strenuously support the effort made at University College to teach the principles of Roman-Dutch law, as they will be taught by Prof. Lee.

Professor Lee then delivered his Inaugural Lecture, which was as follows:

Geographical Extension of Roman-Dutch Law.—The two great Dutch trading companies of East and West—the Dutch East India Company (incorporated in 1602) and the Dutch West India Company (incorporated in 1621)—carried with them into their settlements the system of law which prevailed in the United Provinces, and more particularly in Holland. This system is known as the Roman-Dutch law. It was subject to modification in each Colony by the sovereign authority of the States-General, by one or other of the two companies acting within its powers, and by the local governments. But viewed as a whole the system was the same in all the Dutch possessions beyond the seas. By the middle of the eighteenth century it was administered at the Cape of Good Hope, in Java, Borneo, Sumatra, and the other Dutch settlements in the East Indies, at Curacoa in the West Indies, and in Guiana in South America. What fate has attended it in such of these Colonies as remain to-day subject to the Crown of Holland we need not pause to inquire. The three Colonies which concern us are those which in the last years of the eighteenth or the early years of the nineteenth century passed under the dominion of the British Crown. These are Cape Colony, Ceylon, and British Guiana.

Cape Colony.—The Cape of Good Hope, which had been held by the

Dutch since 1652, was seized by a British force in 1795, and retained until February 1803, when it was resigned by Great Britain to the Government of the Batavian Republic under the provisions of the Peace of Amiens concluded in the previous year.

It was again taken in 1806. On January 10 of that year Lieut.-Gen. Janssens capitulated to Major-Gen. Baird. The terms of capitulation were ratified on the following day and proclaimed on the 18th. From this date Cape Colony has remained part of the British dominions. The actual title of Great Britain, however, is a treaty concluded at London on August 13, 1814, by which the Netherlands ceded to Great Britain this Colony, together with the settlements in South America, which are now comprised in the Colony of British Guiana.

It does not appear that any express stipulation was made upon the occasion either of the first or of the second cession of the Cape for the retention of the Roman-Dutch law; but retained it was in accordance with the settled principle of English law and policy applicable indifferently to all acquisitions by cession or conquest, and retained it still is as the common law of the Colony, the presumption being that, except so far as they have been abrogated by legislation or by the growth of a custom inconsistent therewith, the laws which obtained under the Dutch Government remain in force at the present time.

Ceylon.—The same events which led up to the first British occupation of the Cape were the cause also of the surrender of Ceylon. This island, or the maritime parts thereof (for the Dutch never established themselves in the central kingdom), had been held by the Dutch since 1656. In 1796 it passed to the British by conquest and capitulation. After an interval, during which it was governed from Madras, the island became a Crown Colony, and on September 23, 1799, Governor the Hon. Francis North declared by proclamation that the administration of justice and police should henceforth and during His Majesty's pleasure be exercised in all Courts of Judicature, civil and criminal, according to the laws and institutions that subsisted under the ancient government of the United Provinces, subject to such deviations and alterations as have been or shall be by lawful authority ordained and published.

British Guiana.—It remains to mention the Colony of British Guiana. This has grown out of certain commercial settlements of the Dutch on the coast-line of South America between the rivers Orinoco and Corentyne. The principal of these were the settlements of Demerara, Essequibo, and Berbice. They capitulated to the British in September 1803. The final cession was made in 1814 by the instrument which confirmed British sovereignty over the Cape. In these settlements, too, the Roman-Dutch law was retained. Art. 1 of the terms of capitulation of Demerara and Essequibo expressly stipulates that the laws and usages of the settlement shall remain in force; and a similar proviso is contained in the Letters Patent of

March 4, 1831, by which the three settlements were constituted a single Colony with Major-Gen. Sir Benjamin D'Urban, K.C.B., as Governor.

What Law is in Force: Its Sources.—It results from what has been said that the foundation of the law of Cape Colony is the Roman-Dutch law as it existed in that Colony in the year 1806; that the law of Ceylon is based upon the Roman-Dutch system administered in the island in the year 1796; and similarly the law of British Guiana rests upon a substructure of Dutch laws and usages having authority in the settlements of Essequibo, Demerara, and Berbice in the year 1803.

At this point it may be proper to inquire from what sources the student or practitioner may inform himself as to the laws in force in these Colonies at the dates named, and in particular one may wish to know about the statutory enactments of the pre-British era.

(1) **Pre-British Statutes.**—As regards Ceylon, the answer is given easily. The sources do not exist. The predatory hand of man or the teeming animal and insect life of the tropics has done its work. The legislative measures of the Dutch era are undiscoverable in the island. To satisfy his curiosity, an investigator has nothing better than an index to the enactments of this time printed as an appendix to an official edition of the local ordinances issued in the year 1853. A glance over the contents of this table suggests that the ordinances and proclamations of the seventeenth and eighteenth centuries were concerned rather with administrative matters than with momentous questions of substantive law.

To this, however, there is one exception of the first importance. It relates to intestate succession. The local law upon this topic depends upon a resolution of the Governor's Council dated December 20, 1758, which, according to the interpretation put upon it by the Dutch Court of Justice in 1773, adopted the Aasdom Code of North Holland as the law of intestate succession for the island.

With regard to the pre-British statute law of British Guiana, I have been unable to obtain any information. It may be supposed that the forces of destruction are no less active and persistent in the Western than in the Eastern tropics.

At the Cape the matter stands on a different footing. There exists to-day a complete collection of the placaats, proclamations, and advertisements of the Dutch Government; and in addition there are about three volumes containing an alphabetical digest of the laws passed by the Dutch East India Company in Holland, and by the Government of Java. Interesting information with regard to the archives of the Colony is to be found in the Report of a Commission published at Cape Town in 1877. From this it appears that at the Cape there is no lack of material. But for the practitioner, and even for the jurist, it is of little practical interest. It is seldom appealed to; and though, as observed by De Villiers C.J.

in the often-cited case of *Seaville* v. *Colley*, the presumption is that every law in force in this Colony at the time of the British occupation in 1806 and not since repealed by local statute is still in force; "yet," he continues, "this presumption will not prevail in regard to any rule of law which is inconsistent with South African usages."

The Statutes of Batavia.—It is worth while remarking that in Ceylon and at the Cape local legislation was supplemented in great measure by the enactments of the supreme Government of the Dutch East India Company legislating from Batavia. A compilation of the most important of these Ordinances was promulgated with authority in 1642, and was known as the Old Statutes of Batavia: the later compilation of 1766, known as the New Statutes of Batavia, for some reason or other never seems to have received authoritative confirmation. I understand that fresh light will be thrown upon this interesting topic by my friend Dr. Bisschop in the forthcoming edition of Burge's *Colonial Law*. It must not be inferred that all or any of these statutes were in force in this or that Colony unless locally promulgated.

The Dutch Placaats.—The same may be said of statute law of Holland, whether of the States-General or of the States of the province of Holland and West Friesland. These enactments fill nine folio volumes of the Groot Placaat Boek. But it may be questioned whether a single copy of this monumental work is to be found in the library of a practitioner in the Colonies of Ceylon and British Guiana; and even at the Cape, where the tradition of the Roman-Dutch law is out of all comparison more vital and continuous, it may be safely affirmed that the Dutch placaats are not the *vade mecum* of the practising lawyer. The fact is that the principle of the civil law which admits the abrogation of statutes *tacito consensu* or *contrario usu* as well as *alia postea lege lata*, happily prevents obsolete enactments from paralysing the development of the modern law. In saying this, I do not forget that many of the rules of the Roman-Dutch law are derived from Imperial edicts or Dutch placaats. What I suggest is, that except so far as these enactments are recognised by authoritative text-books or judicial decision they are at the present day of interest to the historian merely and not to the lawyer.

(2) **Legal Treatises.**—The sources, therefore, to which an inquirer may be referred as to the system of law adopted in the British Colonies will be the classical treatises of the great Dutch jurists; the *Introduction to Dutch Jurisprudence* of the famous Grotius, the *Commentary ad Pandectas* of Johannes Voet (which no one can read without feeling that he is in the presence of a great mind dealing with a great subject), the *Commentaries* of Simon van Leeuwen, Registrar of the Court of Holland and West Friesland, and the *Censura Forensis* of the same author, a work which in Ceylon, perhaps more than in the other colonies, has always been held in very high esteem. Finally the slighter, but still valuable works of the latest period

of the old Dutch law, the *Theses Selectæ* of Van der Keessel, and the *Institutes* of Johannes van der Linden. This last-named work was published in 1806, the very year in which the Cape finally passed under British rule, and four years before the old Dutch law in the country of its birth gave place to an era of codification. It is perhaps the only institutional work except the *Institutes* of Justinian, which has enjoyed the singular distinction of receiving specific statutory authority; for by a resolution of the Volksraad of the South African Republic, dated September 19, 1859, it was ordained that "the legal treatise of Van der Linden shall remain (in so far as it does not conflict with the constitution, other laws and resolutions of the Volksraad) the source of legal authority in this state, failing which the *Commentaries* of Simon van Leeuwen and the *Introduction* of Hugo de Groot are to be binding." Such are the sources of the Roman-Dutch law alike for the practitioner and for the student.

In this country the practitioner wags his head at the scientific lawyer. He looks upon a jurist (so to call him) with contempt, if not with pity. One result is that we have books of practice and books for students—the former written, often enough, by men who have little time for study, the latter by men who have small knowledge of the Courts. This divergence is regrettable. In the Roman-Dutch Colonies it does not exist. The student's books are the books also of the practising lawyer, with infinite advantage to the study as well as to the profession of the law. They are the productions of the mature wisdom of great minds perfected in the apprehension of legal science, of men furnished with ability, honoured in their generations, wise and eloquent in their instructions. Happy, surely, are the students of law whose lines are laid in such pleasant places, and whose privilege it is to enter on so goodly an heritage.

Geographical Extension of the Roman-Dutch Law in South Africa.—But it is full time for me to recur to the topic with which I opened, namely, the geographical extension of the Roman-Dutch law in the British Empire. To tell the story of this extension is indeed to tell the tale of the enlargement of the Empire itself—a theme foreign to this occasion. A few dates, however, may be of use to recall to mind the progress of events in South Africa, which have led to and accompanied the vast extension of the Civil Law in that part of the world.

So long as the boundaries of Cape Colony enlarged themselves by gradual and inevitable advance, so long the Dutch civil law extended its sphere by the same natural process of accretion without express enactment. But before the middle of the last century the era of annexation had begun.

Natal.—Natal was annexed to the Cape by Letters Patent of May 31, 1844, and this was followed by the Cape Act No. 12 of 1845, confirming the Roman-Dutch law in and for the district of Natal. This remains the common law of the Colony, which was called into existence as a separate entity by Royal Charter of July 15, 1856; and now the Natal Act No. 39 of 1896

provides: "The system, code or body of laws commonly called the Roman-Dutch law as accepted and administered by the legal tribunals of the Colony of the Cape of Good Hope up to August 27, 1845, and as modified by the Ordinances, Laws, and Acts now in force, heretofore made, or passed, in this Colony by the Governor or Legislature thereof, is the law for the time being of the Colony of Natal and of His Majesty's subjects and all others within the said Colony." There is a reservation of native law in civil cases between natives, except that matters arising out of transactions in trade are dealt with according to the principles of colonial law.

Zululand.—The law of Natal, with some reservations, obtains also in Zululand, which became part of Natal on December 30, 1897.

British Kaffraria, Basutoland.—To return to Cape Colony. British Kaffraria was incorporated in 1865. Basutoland was annexed in 1871 and disannexed in 1884. It is now under the direct authority of His Majesty exercised through the High Commissioner in South Africa. By proclamation dated April 29, 1884, the law in force (save between natives) is, as nearly as the circumstances of the country permit, the same as the law for the time being in force in the Colony of the Cape of Good Hope, but Acts of the Cape Legislature passed after the date of the Proclamation do not apply.

Ichaboe, Penguin Islands.—The Island of Ichaboe, together with the Penguin Islands, became part of the Cape, and subject to Cape Law by Act No. 4 of 1874.

Transkei, Griqualand West, Walfisch Bay, Tembuland, Pondoland, British Bechuanaland.—The Transkei territory was annexed in 1877, Griqualand West in 1878, Walfisch Bay and the St. John's River district in 1884, Tembuland in 1885, Pondoland in 1894, British Bechuanaland in 1895.

The Bechuanaland Protectorate.—In the vast territory known as the Bechuanaland Protectorate, extending over an area of 380,000 square miles between the Molopo River on the south and the Zambesi on the north, by Proclamation of June 9, 1891, the law of Cape Colony is to be administered as far as practicable, to the exclusion, however, of subsequent Cape statutes.

Southern Rhodesia.—Finally in Southern Rhodesia, which includes Matabeleland and Mashonaland, by the Southern Rhodesia Order-in-Council of October 20, 1898, the same law obtains as at the same date (June 10, 1891), except so far as that law has been modified by any Order-in-Council, Proclamation, Regulation, or Ordinance in force at the date of the commencement of the Order.

Orange River Colony and Transvaal.—In the Republics the Roman-Dutch law remained in force almost unaltered up to the date of annexation in 1900. It is continued in the Orange River Colony by Proclamation No. 3 of 1902, s. 1, and in the Transvaal by Proclamation No. 14 of 1902, s. 17. But in each of the new Colonies extensive alterations have been

made so as to bring the law into closer harmony with the system obtaining in the adjoining territories.

Here the tale of expansion ends. My predecessor in the Chair of Roman-Dutch Law at this College told his audience a year ago the story of the progress of the civil law from a town on the Tiber to the distant limits of the Roman Empire, to the remote Batavians and the mouths of the Rhine. It is a theme ever fresh, ever romantic. The story of the extension of the Roman-Dutch system of jurisprudence over half a continent from the Cape to the Zambesi is scarcely less wonderful. The Roman Empire of antiquity is stated by the historian Gibbon to have included at the period of its widest enlargement an area of some 1,600,000 square miles. If mere mileage may be made a basis of comparison, it is interesting to observe that the sphere of the Roman-Dutch law in South Africa stands to the Roman Empire in a ratio of about one-half. If the Roman Juppiter, whom Virgil describes to us as haranguing his daughter on politics, had been a lawyer (and according to one etymology he was), he might have said of the Roman law more truly than of the Roman people, *imperium sine fine dedi.* But Juppiter would have been wrong again: for on the banks of the Zambesi, just as along the line of the Cheviots, the common law of England and the civil law of Rome, like secular antagonists, confront each other. By the North-Western Rhodesia Order-in-Council of 1899, and by the North-Eastern Rhodesia Order-in-Council of 1900, in the British sphere north of the Zambesi the system of law to be administered, so far as local circumstances admit, is not to be the Roman-Dutch Law, but the law of England.

How far Roman-Dutch Law is still in Force in the Colonies.—Hitherto I have spoken of the geographical extension of the Roman-Dutch law within the British Empire. In the remainder of my address I shall endeavour to show how far the system of law set forth in the works of Grotius, Voet, Van Leeuwen, and Van der Linden remains in force in the British Colonies, how far it has been repealed or modified by statute law, judicial decision, contrary custom, or tacit disuse. The limit of time and the number of Colonies affected preclude me from any but a very cursory treatment of this interesting topic. I shall speak principally of the law of Cape Colony, with which I have become acquainted by study, and of the law of Ceylon, of which I have knowledge derived from study and practice.

The whole field of law is commonly divided into Substantive Law, by which rights and duties are defined, and Adjective Law, by which rights and duties are enforced.

(1) **The Law of Procedure.**—The last is more popularly known as the Law of Procedure. With regard to this it may be said generally that every country frames and modifies its procedure to meet the changing needs of the time. Cape Colony has its own procedure, which in civil matters retains most of the characteristics of the Roman-Dutch law with

numerous importations of English practice. The Criminal Procedure of the Colony is regulated by statutes. Upon the whole it approaches more nearly to Scotch than to English practice. Ceylon has its own codes framed on Indian models. In British Guiana the procedure is mainly English.

(2) **The Law of Evidence.**—Closely related to the Law of Procedure is the Law of Evidence. The rules of the civil law in this regard are by general consent inferior in practical utility to the rules of the common law as developed by statute. In Cape Colony a series of statutes has introduced most of the principles of the English law. In Ceylon and British Guiana the English law of evidence found its way in, at first by tacit acceptance and later by express enactment. In both these Colonies the law on this subject has now been codified.

(3) **Criminal Law.**—I pass to the Substantive Law, and first to the law of crimes. The Criminal Law of Cape Colony is neither Roman-Dutch nor English. It forms a system native to the Colony, largely developed by statute and judicial decision. It is stated to be well suited to local needs. A Penal Code has been enacted for the native territories, which in the opinion of so high an authority as Sir Henry de Villiers with slight amendments might be safely adopted for the whole of the Colony. Ceylon has its own code, which closely follows the Penal Code of India. In British Guiana the English criminal law is administered.

(4) **Civil Law.**—*Importation of English Law.*—In the field of Civil Law —to pass next to this topic—we find that in all the Colonies it has been necessary or convenient in certain matters by express enactment to introduce the English law in its entirety. This has been especially the case in relation to trade and commerce.

Ceylon.—Thus the Ceylon Ordinance No. 5 of 1852 enacts that the law of England is to be observed in maritime matters and in respect of all contracts and questions relating to bills of exchange, promissory notes, and cheques; and Ordinance No. 22 of 1866 makes similar provision with respect to the law of partnerships, joint-stock companies, corporations, banks and banking, principals and agents, carriers by land, life and fire insurance.

British Guiana.—In British Guiana by Ordinance No. 6 of 1864 all questions arising within the Colony relating to the following matters—namely, ships and the property therein, and the owners thereof, and the behaviour of the masters and mariners and their respective rights, duties, and liabilities as regards the carriage of passengers and goods by ships, stoppage *in transitu*, freight, demurrage, insurance, salvage, average, collision between ships, bills of lading, and all rights, liabilities, claims, and matters arising in respect of any ship or any such questions as aforesaid—shall be adjudged, determined, construed, and enforced according to the law of England applicable to such and the like cases. Other ordinances have introduced

(in whole or in part) the English law of bills of exchange, joint-stock companies, insolvency, and patents.

Cape Colony.—In Cape Colony important changes in the same direction were effected by Act No. 8 of 1879. This Act by s. 1 introduces English law in all questions relating to shipping, and by s. 2 in all questions of fire, life, and marine insurance, stoppage *in transitu*, and bills of lading. But (s. 3) English statutes passed subsequently to the date of the Act do not apply.

The English law relating to bills of exchange is with some differences reproduced in the Cape Bills of Exchange Act, 1893. The Companies Act of 1892 resembles the law of England, without, however, following it in every particular.

Influence of English Case Law.—The sweeping statutory alterations to which I have referred and others to be mentioned later are not the only instruments whereby whole sections of the English law have been introduced into the Roman-Dutch Colonies. It will, I think, be found that wherever—as in the law of principal and agent, principal and surety, partnership, and so on—the rules of the common law and of the civil law either correspond or very closely approach, the colonial Courts have been eager to avail themselves of the guidance of English decisions, even though the English law may not have been expressly introduced by statute in relation to the matter under consideration. The same may be said of all questions of mercantile law, since the laws of both countries have a common foundation in the custom of merchants. This was pointed out in the year 1821 by one of the earliest and not the least able of the series of Ceylon Chief Justices, Sir Hardinge Giffard. "The text of the Roman-Dutch law," he said in the case before him, "furnishes little to guide us. But it fortunately happens that the great commercial code called the custom of merchants has its foundation in this very law. It is principally composed of the rules laid down by the consent and practice of the merchants of Holland. We look upon every decision of the Courts of Westminster upon commercial subjects as a commentary upon the Dutch commercial law."

The decisions also of English Courts of Equity, based as they often are on the civil law, are frequently cited and followed in the colonial Courts.

Illustrations of Development.—It would be wearisome to pursue in detail the course of development in the several Colonies. Let it suffice to give a few illustrations of the changes which have taken place in the law of persons, of property, of succession, and of contract.

(A) **The Law of Persons.**—(1) *Age of Majority.*—The age of majority in Roman-Dutch law was twenty-five. In all the Colonies this has been reduced to twenty-one in conformity with the law of England. It may be observed in passing that the rule of English law which makes full age begin with the day preceding the twenty-first birthday has no counterpart in Roman-Dutch law.

(2) *Specific Enforcement of Promise to Marry.*—By Roman-Dutch law a promise of marriage might be made the occasion of a decree of specific performance. This method of stimulating affection has been discontinued.

(3) *Consent of Parents to Marriage of Children.*—By the civil law the consent of the head of the family was essential to the validity of the marriage of any one in his power, irrespective of age. The Roman-Dutch law restricted the requirement of consent to males under twenty-five and females under twenty. In the modern law the age limit is twenty-one for both sexes. Marriage contracted by minors without the consent of parents, express or implied, will be declared void by the Court, if the parents stand upon their strict rights. By the Edict of the Emperor Charles V. of October 4, 1540, § 17, persons who contract clandestine marriages with minors are penalised by the loss of any benefit which they would in the ordinary course have derived from the property of the minor spouse. This law still holds good.

(4) *Remarriage of Widows.*—The Roman law discouraged remarriage by various penal enactments. The most important of these was a constitution of Leo and Athemius (Codex 5. 9), known from its opening words as the *lex hac edictali.* This provided that a survivor cannot give by deed *inter vivos* or bequeath by testament to his or her second spouse more than the amount of the smallest portion given or bequeathed to any child of the first marriage. Gifts in contravention of this rule were void to the extent of the excess. This law was repealed at the Cape by Act 26 of 1873, § 2, and in the Transvaal by Proclamation 28 of 1902, § 127. In Ceylon it would appear to be disused. In British Guiana it has been abolished within the last few weeks by Act No. 12 of 1906. I am indebted for this information to a gentleman connected with the Colony, who was kind enough to write to me.

(5) *Community of Goods.*—As regards the legal consequences of matrimony, it may be said that the institution of Roman-Dutch law by which marriage effected a universal partnership or *communio bonorum* between the spouses still exists in Cape Colony in cases where it has not been expressly or by clear implication excluded by ante-nuptial contract. In Ceylon since the Matrimonial Rights Ordinance (No. 15 of 1876) community of goods no longer obtains in respect of movable or immovable property. In British Guiana it has been lately abolished by Ordinance No. 12 of 1904.

It may be remarked that "community of goods" is one of the institutions of Roman-Dutch law which depend not upon the civil law, to which it was entirely foreign, but upon custom. If Voet is to be believed, its origin is—in Hale's phrase—as mysterious as the sources of the Nile.

(B) **The Law of Property.**—This is a branch of law which remains substantially unaffected by legislation. The Roman-Dutch law of registra-

tion of deeds is universally approved. The principal alterations which have taken place relate to the law of mortgage and to prescription. In Ceylon both these topics have been brought into great confusion by judges imperfectly acquainted with the rules of the civil law. At the Cape many of the tacit hypothecs which abounded in Roman-Dutch law have been abolished, while conventional hypothecs have been put upon an easy footing by the Acts relating to the registration of deeds.

(C) **The Law of Succession.**—(1) *Testamentary.*—By the Roman-Dutch law (following herein the civil law) the testamentary heir was the universal successor of the deceased, and liable as such. In the modern law this is no longer the case. His precise legal position has been found somewhat difficult to define.

As regards the formalities of testation, the Roman-Dutch law permitted nuncupative wills, if declared in the presence of seven witnesses. Written wills were valid if executed either before seven witnesses or before two witnesses and a notary. In certain cases the law permitted wills, known as privileged wills, to be executed with less than the ordinary formalities.

The colonial law as to wills depends largely upon statute. At the Cape by Ordinance No. 15 of 1845, execution in the presence of two witnesses present at the same time is sufficient, and (except in the case of privileged wills) indispensable. Testator and witnesses must sign.

In British Guiana a similar mode of execution was permitted, but not prescribed, by Ordinance No. 3 of 1839. The recent enactment, above referred to, Ordinance No. 12 of 1906, makes this procedure compulsory, and at the same time abolishes all other forms of testamentary disposition. In Ceylon, by Ordinance No. 7 of 1840, a will must be executed in the presence of two witnesses and a notary or of five witnesses without a notary. Freedom of testamentary disposition is now unrestricted at the Cape and in Ceylon. The law of legitim is still observed in British Guiana.

By the civil law an heir was permitted to retain one-fourth of the inheritance as against legacies and *fideicommissa*, the first by the Lex Falcidia, the second by the Senatus-Consultum Trebellianum. In Cape Colony and the Transvaal these deductions have been abolished, as also in British Guiana by the very recent Ordinance previously cited. In Ceylon the old law appears to be disused.

(2) *The Law of Intestate Succession.*—Great divergence of custom existed with regard to this matter in the Dutch Provinces. Even within the narrow limits of the Province of Holland two quite different systems prevailed, the Aasdom law of North Holland, and the Schependom law of South Holland. The States-General attempted to adjust matters by legislation, but with very partial success. The Political Ordinance of April 1, 1580, enforced uniformity on the lines of the Schependom law. This having proved in many quarters unacceptable, a placaat of 1599 adopted with modifica-

tions the Aasdom law for the greater part of North Holland and for some considerable parts of the other states. The subject of intestate succession to persons dying in the East Indies or on the voyage there or back was the subject of frequent enactment. A rather lurid light is thrown on the necessity for this when we learn that "it was no uncommon circumstance for one-third of the crews to have perished, when the ships arrived in India." The variety of laws on this subject has occasioned much difficulty. I shall not enter upon a thorny discussion. Suffice it to say that the law of Cape Colony is stated by Mr. Maasdorp to be based upon the Political Ordinance of 1580, an interpretation of the said Ordinance promulgated on May 13, 1594, and a privilege granted by the States-General of the United Provinces to the Dutch East India Company on January 10, 1661. In British Guiana the law for Demerara and Essequibo depends upon a resolution of the States-General of October 4, 1774, enjoining the observance of the Aasdom rule of succession as contained in the placaat of 1599. A different law is in force in Berbice. In Ceylon also the law was, according to a decision of the Dutch Court of Justice in 1773, confirmed by decisions of the Supreme Court in 1822 and again in 1871, the law of North Holland. Intestate succession in the island is now regulated by the Matrimonial Rights and Inheritance Ordinance of 1876, already cited in another connection. But by s. 40 in all cases where the Ordinance is silent the rules of the Roman-Dutch law as it prevailed in North Holland are to govern and be followed.

(D) **The Law of Contract.**—In the sphere of contract many alterations have been effected by the various statutes above cited which introduce whole sections of English Law. In addition to these, the Ceylon Ordinance No. 11 of 1896 practically enacts for the island the English Sale of Goods Act of 1893. How it is proposed to reconcile this enactment with the rules of the Roman-Dutch law of contract, which, except so far as affected by legislation, still remains in force, is a problem well calculated to tax and probably to baffle the judicial talent of the Colony.

Two special points in contract law may be mentioned, both dealt with by the Cape Act No. 8 of 1879, the wider provisions of which have been already quoted.

Remission of Rent.—By the civil law, which herein resembled the Code of Hammurabi, a lessee might resist a claim for rent on the ground that he had, owing to causes outside his control, been unable to make profit of the land. This rule has been abolished at the Cape by s. 7 of the Act, which provides that in the absence of any special stipulation to the contrary contained in any contract of lease, no lease of land shall become void or voidable, nor shall the rent accruing under such lease be incapable of being recovered, on the ground that the property leased has through inundation, tempest, or such like unavoidable misfortune produced nothing, or on the ground that the lessor himself has absolute need of the land or other property leased.

Læsio enormis.—S. 8 of the same Act relates to what is known as *læsio enormis*. A rescript of Diocletian provided that if property was sold for less than half its real value, the seller might obtain from the Court a decree of rescission upon the terms of restoring to the purchaser the price paid by him, unless the purchaser chose to make good the deficiency in price (Cod. 4. 44. 2). This rule was adopted into the Roman-Dutch law and applied also to a purchaser who had got less than half a fair equivalent for his money. The same principle was extended to other contracts, such as letting and hiring. But the limits of its application were ill-defined, and in Cape Colony it has been found advisable to enact that no contract shall be void or voidable by reason merely of *læsio enormis* sustained by either of the parties to such contract.

In the other Colonies both these rules presumably remain in force.

Consideration.—I must not leave the subject of contract law without noticing the *vexatissima quæstio* whether a nude promise is actionable in Roman-Dutch law without consideration. Chief Justice de Villiers at the Cape says No, Chief Justice Rose-Innes in the Transvaal says Yes. The latter alternative has been approved in Ceylon in the recent case of *Lipton* v. *Buchanan*.

Summary and Conclusion.—Not to trespass longer upon your indulgence, I conclude with a rapid summary. I shall try to present a general view of the Roman-Dutch law as it exists to-day and to say a word about its probable future.

I begin by distinguishing between the Roman-Dutch law in South Africa on the one hand and in Ceylon and British Guiana on the other. I shall distinguish further its fortunes in the two last-named Colonies. In South Africa its tradition is continuous, its pre-eminence unchallenged. Bench and Bar have been trained to it. The best legal talent of the country has applied it in judgments or explained it in text-books. Far other has been its fate in Ceylon. Here it has been mangled by the Legislature, and administered in great measure by judges ignorant and sometimes frankly contemptuous of its principles. And yet it lives! The local Bar is vigilant and active. The Bench has been adorned by at least one profound civilian. There are text-books. There are law reports, almost continuous since 1821. In British Guiana these signs of activity have been absent. There are no text-books. There are no written records of judgments of earlier date than 1856. There are no reports, the series initiated in 1890 having been discontinued after four years' life. Upon a general view of the state of the Roman-Dutch law in this Colony it may be said that except in the sphere of property and intestate succession not very much of it remains. What of it the Courts had spared the Legislature has quite lately set itself to destroy.

Such have been the fates of the Roman-Dutch law in the British Colonies. Here it is honoured, there abased; and yet upon a general view it remains to-day (at least in South Africa) what it was a hundred years

ago, a reasonable and well-compacted system, elastic and adaptable. Persons who know little of its theory and nothing of its practice speak lightly of abolishing it from the face of the earth. They will propose next to abolish the eternal principles of right and wrong. For law, I conceive, is not something arbitrary and accidental. The relations which we express by the words "property," "obligation," "mortgage," "sale" and the like are not the figments of analytical jurists, but real facts of human life. It is to regulate such relations that systems of law exist. And each one system in each one of the limbs and branches of its Code does this work, sometimes better, sometimes worse. The ideal system, if we could come at it, does this work not better or worse, as may happen, but perfectly. It lies not entirely beyond our grasp. We may construct it, perhaps, by intelligent reflection upon the nature of man's life on earth, and by comparison of known systems. So shall we attain to what I venture to term the Law of Nature, of which we see but broken lights in our law reports and our text-books. This is the law which sets the standard of right and wrong in respect of the organised relations of civilised men. It commends itself to reason. It is justified by experience. It is immutable and eternal, and God Himself cannot alter it. Each system is better so far as it approaches to this ideal, worse so far as it recedes from it. The civil law of Rome, whose principles have been infused into the Roman-Dutch law, in the opinion of those best qualified to speak, more than any other realises this ideal excellence.

If the merit of a system of law could ensure its continuance, there is no reason why the Roman-Dutch law should not continue for ever. But it will not remain unchanged. It will develop, as every live system must; the Roman-Dutch law of the future will be not the Roman-Dutch law of Holland, but the Roman-Dutch law of the British Empire.

As such I shall endeavour to present it to any persons who attend my course. To the student from Ceylon I shall point out that he has a treasure-house of living Roman law in the law reports of South Africa. Sometimes I shall refer the South African student to the decisions of the Courts of Ceylon. Hitherto it has been one of the many limitations of legal education in London that a good collection of colonial law books was nowhere to be found. The enterprising Librarian of the Royal Colonial Institute, Mr. Boosé, has gone far to remove this reproach. In the library of the Institute in Northumberland Avenue he has got together a collection of colonial statutes and law reports far superior to any other in London. But the Royal Colonial Institute is accessible only to members or, by courtesy, to others. It is still unhappily the fact that no one institution exists in the capital of the Empire to which lawyers generally, still less the public, can resort with any hope of finding a reasonably complete assemblage of colonial statutes, law reports, and text-books.

INTERNATIONAL LAW ASSOCIATION AT BERLIN.

[*Contributed by* Thomas Baty, Esq., D.C.L.]

Twenty-third Conference.—The twenty-third Conference of the International Law Association, held in the Imperial capital last October, proved an unqualified success from every point of view—not the least important being that of international concord.

Reception.—Unbounded hospitality was shown to the visitors; and those of them who were English were received with even greater cordiality, if possible, than other strangers. The invitation was issued by the Berlin Juridical Society and the Berlin Society for Comparative Jurisprudence: the respective presidents, Dr. Koch (Reichsbank) and Dr. F. Meyer (Prussian Court of Appeal), together with Professors von Martitz, Gierke, and Riesser and other leading Berlin jurists, were frequently in attendance at the meetings. The Chamber of Commerce and the City Corporation were among the organisations which entertained the visitors on so generous a scale, and the former placed its new hall at the disposal of the Conference for its sittings. H.I.M. the German Emperor honoured the Conference by replying in gracious terms to a message of respect forwarded at its first meeting, and also admitted members to the privilege of entrance to the Royal Palace, where they were received on the second day by Prince Frederic Leopold and entertained at lunch. The work of organising the Conference in Germany fell largely on Dr. G. Schirrmeister and Dr. V. Schneider, the latter of whom was secretary of an influential Reception Committee.

Programme.—A very wide range of subjects was covered by the programme. The Association makes its appeal to a variety of interests. It has to provide for the scientific publicist, for the shipowner and merchant, for the private international lawyer, for the philanthropic cosmopolitan. Consequently the programme must cover a wide field. On the present occasion it comprised, in the division of public international law, the subjects of mines in naval war, visit and search, territorial waters, exemption of private property at sea, nationality and naturalisation; in that of private international law, those of divorce jurisdiction, the recognition of foreign companies, foreign pauper litigants, and security for costs; in that of commercial law,

the Harter Act, general average, and the Berne Railway Transport of Goods Convention; whilst topics of especial interest from the humanitarian point of view were those of arbitration and trade routes for the avoidance of collision.

Mr. Justice Kennedy, as the senior member of Council present, gave invaluable help to the Conference in the many ways in which his familiarity with its organisation enabled him to be of such service, and spared no sacrifice of time and trouble to that end. He was ably seconded by Mr. Justice Bigham, who was able to recall the experiences of schooldays spent in Berlin, with the result of establishing the Association at once in the good graces of the city. Unfortunately, Mr. Justice Phillimore, President of the Association, was prevented by illness from leaving England. Among other distinguished visitors the Prussian and the Imperial Ministers of Justice and the United States Ambassador were present at several sittings. Dr. Koch was appointed President of the Conference, and was frequently able to take the chair in that capacity.

Speakers and Resolutions.—Among the papers read, none attracted greater attention than that contributed by Mr. Justice Kennedy on the proposed Exemption from Hostile Capture of Private Property at Sea—a subject to which the present Lord Chancellor has given much attention, and the history of which is lucidly stated in Mr. Justice Kennedy's paper. The seizure of cargoes, as he points out, is one of the least violent measures of warfare known, and is not fairly comparable with the discredited institution of pillage on land. Its abandonment by Great Britain, the learned judge thought, might at any rate be coupled with a *quid pro quo*—such as the definite abandonment of all pretensions to bombard unfortified coast towns. It may perhaps be respectfully suggested that it might be well to avoid giving colour to the idea that barbarities of this kind can possibly be permissible and a basis for bargain. A strong committee was appointed to consider the question; Sir Thomas Barclay remarking that it must be remembered that it would be of little advantage to concede a nominal exemption from seizure to hostile cargoes whilst permitting both neutral and hostile goods to be confiscated under a wide definition of contraband. Professor von Martitz read an exhaustive paper on Mines in Naval War, which met with marked approval as a masterly study of the subject; whilst Mr. de Leval (British Legation, Brussels) and Mr. J. E. R. Stephens (London) also contributed well-thought-out suggestions regarding various neutral liabilities. The different points brought forward in their papers were referred to a second committee, with power to confer with the first, and, if advisable, to present a joint report. Mr. Charteris (Lecturer in International Law at Glasgow) presented a learned disquisition on the recent Moray Firth trawling case, which embodied a most valuable compendium of the history of jurisdiction in territorial waters generally, with full references to authorities. The subject of the Conflict of Rules as to Nationality and Naturalisation formed

the basis of a suggestive treatise by Dr. Wittmann of Buda-Pesth, in which he developed the theory that such conflicts should be resolved on the lines laid down by private international law. The evident connection of the suggested theory with the value attached abroad to nationality as the criterion of private law status will not escape the reader.

Private International Law.—Divorce Jurisdiction has recently attracted much attention in England and North America. Mr. Justice Phillimore contributed a most useful paper on this subject, in which the Continental doctrines were also dealt with. It was followed by an account of the jurisprudence of the United States in this matter, given by Mr. J. Arthur Barratt of the London and New York Bars. Mr. Barratt explained that the recent American case of *Haddock* v. *H.* was not an absolute decision adopting domicile as the test of jurisdiction, but turned merely on the interpretation of the constitutional provision for mutual recognition by the State Courts of each other's judgments. No specific resolution was adopted on this topic, but on that of the Recognition of Foreign Companies the Conference gave its approval to a code drawn up by a committee (presided over by Mr. W. F. Hamilton, K.C.), and presented by Dr. Gustavus Schirrmeister. Dr. G. Marais (Paris), in a paper on the Nationality of Corporations, adopted the view that the "nationality" of a corporation—*i.e.* what an English lawyer would style its "domicile"; really, the criterion of its proper private law—is that of the place where it is managed, not that of the country which incorporates it, nor that of the place where its material operations are carried on, nor that of its shareholders.

The linked subjects of Foreign Pauper Litigants and Security for Costs were discussed in elaborate papers by Dr. V. Schneider and Dr. S. Goldschmidt. They pointed out the difficulty under which British litigants of poor means (especially defendants) labour in Germany, owing to the apparent want of reciprocity in the provision of assistance for paupers in England and Scotland.

Commercial Subjects.—The vexed question of interference between ship-owner and merchant, so as to render void, and perhaps penal, clauses in bills of lading relieving the former of responsibility for negligence, is a hardy annual at these conferences. Last year, at Christiania, only the chairman's vote secured the rejection of Professor Platou's resolution approving the policy of the Harter Act in this sense. On the present occasion, the feeling was unmistakably strongly against such legislation. Although the resolution (unanimously adopted) was limited to declaring that at present it was not proved that any necessity existed for it, with an invitation to the commercial public to supply evidence to the contrary, yet the applause with which the vigorous declarations of Dr. Sieveking (Hanseatic High Court of Appeal), Mr. Justice Walton, Mr. Justice Bigham, and Mr. Justice Kennedy were received, expressing as they did emphatic approval of freedom of contract in commercial matters, showed plainly in which direction lay the

sympathies of the Conference. General average was discussed at some length in papers by Dr. Govare (Paris), Mr. Langlois (Antwerp), and others. Although it is universally regarded as undesirable to propose any alteration in the York-Antwerp rules, yet the interpretation of them in the Courts, particularly in France, appears to be producing some incertitude which it is highly desirable to have controlled by scientific opinion. Mr. Langlois secured the appointment of a permanent committee of average adjusters, which should deal with all cases of difficulty as they occur, and report from time to time to successive conferences. A high official in the Department of Communications, Dr. von der Leyen, read an interesting paper on the Berne Railway Transport of Goods Convention, a subject which engaged the attention of the Conference last year also.

Trade Routes and Arbitration.—Commandant Riondel (Nantes) communicated to the Conference a powerful appeal in favour of the international adoption of trade routes as a means of avoiding collisions at sea; Dr. Evans Darby favoured it with his usual full and accurate summary of the progress of arbitration and the work of The Hague Tribunal during the past year; and last but not least, Sir Thomas Barclay laid before it a series of proposals for the reference to judicial appreciation of causes of quarrel between nations which involve "vital interests" or "questions of honour." These are really the disputes which in point of fact do cause wars, and The Hague Convention does not touch them except very tentatively. At the same time, Mr. Crackanthorpe may be right in saying that a commission of lawyers is not the ideal tribunal for their solution; and Dr. Darby strongly objected to Sir Thomas's proposals, as an encroachment on territory over which The Hague Tribunal had a right of pre-emption. But the feeling of the Conference seemed to be that the dignity of the tribunal ought not to stand in the way of a settlement, and it referred the proposals to the Executive Council for consideration.

Bills of Exchange.—In conclusion, it should be mentioned that there is a strong movement in Germany in favour of the unification of the law of Bills of Exchange. Judge Meyer (Prussian Court of Appeal) has written an excellent comparative monograph on the subject, which may be commended to readers of this Journal; and the question was brought up at one of the sittings of the Conference, when, on the proposition of Stadtrat Kämpf, it was agreed that the Association should co-operate in the work of elaborating a code of unification. The Association has long taken a practical interest in the matter, and framed a code (adopted at the Bremen Conference in 1876) which has the merit of simplicity and clearness. It might well serve as a basis for a more elaborate *projet de loi*. It is hoped that some definite result may follow from the collaboration with the German societies working in the same field of this Association, which has just concluded so interesting and successful a meeting at their invitation.

CHILDREN'S COURTS.

[*Contributed by* THOMAS RAWLING BRIDGWATER, ESQ.]

Child Criminal Statistics.—Early next year there will open the largest Criminal Courts in the largest city in the world, with a jurisdiction reaching beyond even the limits of Greater London. Writ large and carved deep over its portals are the words, "Defend the Children of the Poor and Punish the Wrong-doer" (a text from the Bible, attributed to the researches of the Dean of Westminster)—words suitable enough for the Society for the Prevention of Cruelty to Children, but, placed over the new Criminal Courts of the city, hardly an adequate expression of the thought and spirit of the age, "Defend all men, regenerate the wrong-doer, keep the young from contamination":—words like these would have been more true to the aims of the present-day criminologist.

Let us see what the world at large is doing outside London for dealing with juvenile delinquents and more particularly by special Courts for the hearing of children's cases; but first a few statistics relating to the trials of children and young persons under the age of sixteen. For one year—ending March 31, 1906—1,028 young persons under sixteen years of age were committed to prisons in England and Wales. Of these 903 were committed from Courts of Summary Jurisdiction, 20 from Quarter Sessions, 15 from Assizes; 725 of the young persons committed from Courts of Summary Jurisdiction were in respect of the non-payment of fines.

No statistics are at present available for 1905 or 1906 as regards children and young persons under sixteen committed to reformatories and industrial schools; but taking the statistics for the year 1904, they are as follows:

1,129 young persons under sixteen were tried and sent to reformatory schools. Of these 1,105 came from Courts of Summary Jurisdiction and 24 from Courts of Quarter Sessions and Assizes.

2,669 children were sent to industrial schools. Of these 363 were charged with crime; the remainder were charged with begging, wandering, and not attending school.

1,354 were sent to truant industrial schools and 1,334 to day industrial schools.

A total, therefore, of 7,514 children and young persons under sixteen were during a period of twelve months before the criminal tribunals of the country.

If we add what is known as the Juvenile Adult prison population—*i.e.* young persons between the ages of sixteen and twenty-one—these amount to 15,878 males and 2,248 females, making a grand total of 25,640 young persons under twenty-one, recognised by the civil law as "infants," charged with some offence before the Criminal Courts during a period of twelve months in England and Wales.

On June 30, 1905, instructions were issued from the Home Office to the Stipendiary Magistrates in London, directing that charges against children should be heard first, before other cases, and that summonses against children should be taken, if possible, apart from other business: that children in custody awaiting trial should be kept in a waiting-room apart from other prisoners, and not be in Court during the hearing of other cases or with other adult prisoners, and that children before the magistrates should not be placed in the dock. A Bill called the Summary Jurisdiction (Children) Bill, dealing with the matter, was presented by Mr. John Tennant, M.P., and was supported by other members, Lord Edmund Talbot, Sir Howard Vincent, Sir George Kekewich, Mr. Crooks, Mr. Allen, Mr. Yoxall, Mr. Spicer, and Mr. J. Ramsay Macdonald, but has been withdrawn as the Government propose to bring in a Bill of their own.

The objects of this Bill were to provide for the detention of children before trial in places other than the ordinary police cells, and to separate the trials of young persons under sixteen from trials of other accused persons; and to extend and develop the policy of the Probation of First Offenders Act, 1887, by releasing youthful offenders on parole.

Clause 1 provides that children must be tried in some other place than the ordinary Court-room, whilst leaving the authorities free to arrange this with the least trouble and expense.

Clause 2 extends s. 4 of the Youthful Offenders Act, 1901, to the period prior to the trial. (That section allows children to be committed to some more suitable place than a police cell, but it applies to the period during which the child is "under remand or committed for trial." The section contains all necessary provisions and safeguards as to the security of the prisoner and the expense.

Clause 3 embodies provisions of the First Offenders Bill, 1887, which were approved by the House of Commons, but dropped by the House of Lords, before that Bill became an Act. (Those provisions were to enable "the conditional release" of children to become more general by enabling the Court missionary, or some society, to undertake the work.)

This Bill and other legislation for the protection of children of school age are chiefly promoted by the "Committee on Wage-earning Children"; Hon. Secretary, Miss N. Adler, 6, Craven Hill, Hyde Park, W.

England.—The establishment of Children's Courts appears possible without legislation in the counties outside London, as s. 20 (5) of the Summary Jurisdiction Act, 1879, provides as follows: "The Justices of a Petty Sessional division of a County shall from time to time . . . appoint police-stations, or other places other than the petty sessional Court-house, to be used as occasional Court-houses, at which cases may be tried, determined, and adjudged." It is suggested that this section should not only be extended to London, but should be made obligatory, not permissive merely. Already in Manchester, Birmingham, Bolton, Bradford, and Taunton, children's cases are heard separately, and in some of these towns special rooms are set apart for the purpose.

In Manchester, the sitting is held in a committee-room, and there is consequently a less formal element in the arrangement of the Court than in Birmingham, where a Sessions Court is used for the purpose. In Birmingham separate waiting-rooms for children charged with crime and children not charged with crime are provided.

During the past year, 1905-1906, there has been, according to the report of the Commissioners of Prisons, a remarkable decrease in the number of juvenile offenders in Birmingham, and this, in the opinion of the governor of the prison, is entirely due to the opening of the Children's Court during recent years.

Scotland.—Special arrangements for the treatment of juvenile delinquents have been introduced at Glasgow and Greenock, and are as follows:

(1) The trial of youthful offenders does not take place at the ordinary sittings of the Court.

(2) No child under sixteen, unless in exceptional circumstances, may be confined in ordinary police cells previous to trial.

(3) The district superintendents are encouraged to deal with trifling offences without bringing them into Court.

(4) Probation officers are to be in daily attendance for the purpose of receiving the instructions of the presiding magistrates on such cases as may seem suitable for placing on probation.

The first case dealt with on these lines was of a lad of seventeen, who was placed on probation for two months under the care of an officer for using obscene language.

The United States of America.—The state of Massachusetts is ahead in this, as in so many matters, and so far back as 1863 passed a law separating the child in Court from the adult charged with crime. The Act was only enforced in the city of Boston, and then not effectually. Similar legislation was passed in New York in 1877, and amended in 1884 by an Act which permitted that a person under the age of sixteen when convicted of a crime might at

the discretion of the Court be placed in the charge of any suitable person or institution willing to receive him. Further amendments were introduced in 1892 and 1894, but it was not until 1902 that the first Children's Court in a separate building was opened in New York. The Court is presided over by six Justices of the Court of Special Session sitting at stated periods. All children arrested for crime are detained in the building of the Society for the Prevention of Cruelty to Children. At no time are they allowed to be placed in prisons or gaols. The most valuable element in this, as in so many other Children's Courts in America, is the administration of the parole system. During 1904, of 3,749 children convicted of crime or found to be ungovernable or disorderly, 1,098 were released on parole under the care of probation officers. More than 83 per cent. showed such improvement, morally and materially, that they were finally discharged or released under suspension of sentence. In Brooklyn and Buffalo and other towns of the state of New York separate Children's Courts have been established. The 1903 Amendment of s. 28 of the Penal Code rendered it obligatory for all cases involving the trial and commitment of children under the age of sixteen years to be heard separate and apart from adult cases, and as far as possible in a separate room, to be known as the Children's Court.

The Juvenile Court Laws of the various states which have adopted their reform vary in certain particulars, but work apparently on very similar lines. The Illinois and Colorado laws give the Juvenile Court jurisdiction over all dependent and delinquent children under sixteen years. Dependent children ("dependent" may be defined as "neglected"), as well as delinquent children, are placed under the care of probation officers attached to the Court, and it is estimated that the paroling of 472 out of 1,628 children brought before the Chicago Juvenile Court has resulted in a saving of 56,280 dollars per year in industrial school fees. It should be added that 960 cases from this Court were sent to institutions during 1904 on the understanding that, if the parents would reform, their children should return to them. The parents themselves were in many instances placed under the care of the probation officers.

Colorado, Nebraska, and Illinois appear to be the only states which by Adult Delinquency Laws are able to punish parents for conducing to the offences of their children, but other states are considering this question and will shortly legislate. Twenty-two of the United States have now framed Children's Court Laws.

Canada, recognising the desirability of separating youthful offenders from old offenders during detention and trial, The Youthful Offenders Act was passed in 1894, which provides that "the trials of young persons apparently under the age of sixteen years shall take place without publicity, and separately and apart from the trials of other accused persons, and at suitable times to be designated and appointed for that purpose." Special provision has to be made for the detention of youthful offenders while awaiting trial.

In Ontario there is an Act of 1893 which is, however, much more definite, and requires that in all cities and towns with a population of over 10,000, children's cases may not be tried and disposed of in the Police-court rooms ordinarily used as such. Such trials are to take place either in the private office of the judge or in some other room of the municipal building. If, however, no other accommodation but the Court-room is available, the children's cases may only be dealt with two hours after the ordinary business of the Court is over. Separate provision must be made for the custody of children awaiting trial, either with some responsible person or society. The judge may, if he thinks fit, hold the examination into the case of a child under twelve years on the premises of the Children's Aid Society, and not in the Children's Court. The Amendment Act of 1903 enables a judge to discharge a child without conviction, and to place him or her under the care of a probation officer, who must report from time to time on the child's welfare.

In each electoral district within the province, since 1905, a committee is appointed consisting of six persons or more, half of whom are women, known as the "Children's Committee." Each member is known as the "Children's Agent," who may act at any time as a probation officer.

South Australia.—This was the earliest of our Colonies to consider the question. Children's Courts were instituted in 1890 by a ministerial order, subsequently legalised by the passing of the State Children's Act in 1895. This Act established a State Children's Council, a voluntary body appointed by the Governor, consisting of six men and six women. The administration of the State Children's Department was placed in the hands of this Council and its secretary. By s. 31 of the Act "the hearing or trial of all complaints and information against any child for offences punishable on summary conviction before a justice or justices, with or without the consent of the accused or any other person, shall, (*a*) within the city of Adelaide, be held in some room or place approved of or appointed in that behalf by the Chief Secretary, and not in any Police or other Court-houses, and any Act or law heretofore in force notwithstanding; (*b*) outside such city or town, may be held in any Police or other Court-house, but so that the hearing or trial shall take place at an hour other than that at which ordinary trials are taken." The Act further provides that the children being charged by their parents with being uncontrollable or incorrigible, or children convicted of a crime or offence, may be released on probation, or may be released on probation and subject to the supervision of the Council until they have reached the age of eighteen. Children on arrest are never taken to a police-station, but to the State Children's Department, where proper provision is made for their detention and supervision under the care of a matron and a staff of assistants. The Children's Court is held within the same building.

New South Wales.—A Bill dealing with neglected children and juvenile

offenders has recently passed the legislature. A proposition that in the case of girls being charged the President of the Court should be a woman was only lost by a small majority. The Act became law in 1905, and provides that the Governor shall, by proclamation, establish special Courts to be called Children's Courts. Every such Court shall consist of a special magistrate, and shall have jurisdiction within the area named in the proclamation. A Court is to be held where practicable in the proximity of the shelters for the reception and temporary maintenance of children under detention. The Court may be held in a room approved by the Minister of Public Instruction, but if a Court-room or police office is approved it may only be used when the ordinary Court business is not being transacted. Children on being apprehended are to be taken to the shelter. A child charged with being neglected or uncontrollable may be released on probation upon such terms and conditions as the Court think fit, or may be placed in the care of some person willing to have the care of him, or may be committed to an institution. The same provisions govern the cases of children summarily convicted of indictable and non-indictable offences. Parents who have conduced to the child's offence by neglecting him may be ordered to pay a fine, damages, or penalty. A child who breaks the terms of his probation may be apprehended and brought before the Court. A recent report states that since the establishment of Children's Courts in New South Wales the Police-courts and Prisons there are cleared of children.

South Africa.—Cape Colony alone at present, in South Africa, seems to have considered the possible contamination of young persons in gaols, but not in the Courts. In 1904 an Act was passed to prevent women and young persons awaiting trial, and juvenile offenders, pending apprenticeship or removal to a reformatory, being subject to the contamination of gaols. Such persons are to be detained in some place other than gaols to be selected by the Governor.

Egypt.—It is stated that in Cairo a Children's Court has been established with good results.

In 1904 certain articles of the Criminal Code dealt with the subject of juvenile offenders, and gave power to entrust juvenile offenders to their parents; also it was enacted that the death penalty and penal servitude cannot be imposed on offenders between fifteen and seventeen years of age.

India.—The question is being considered and discussed as to making better arrangements for the trial and imprisonment of youthful offenders.

Belgium.—There are no special Courts for the trial of children or youthful offenders. Their trials are regulated by the Belgian Civil Code of 1867, as follows: If the accused is under sixteen years at the time of committing a crime and it is decided he acted *sans discernement*, he may be either acquitted or placed in a special reformatory or charitable establishment, or may be given back to his parents. If the Court decides that the crime was committed *avec discernement*, and is a crime punishable with death, he may be imprisoned

from ten to twenty years; if punishable with hard labour, from five to ten years; if punishable with imprisonment or ordinary detentions, from one to five years.

Subsequently the punishment of death was not passed on any one under eighteen, and now the death penalty is abolished entirely in Belgium.

In Brussels there exists a novel and interesting arrangement. A Committee of Barristers, since 1892, defend all children brought before the Tribunal Correctionnel de Bruxelles. The Committee consists of twenty-five members of the Brussels Bar, under the presidency of M. le Jeune, who, as Minister of Justice, inspired the idea of forming this Committee.

Denmark.—No Children's Court exists. The Danish legal system is still very antiquated. Every sentence is based on a confession, which it is the work of the judge to bring about. A committee has been sitting for forty years, discussing reform. The Danish *Retshjaelp* (legal helper) is not for prisoners, but for people without means. This institution was referred to in this Journal in 1899.

France.—At present there is no separate Court or any special system for the trial of criminal children or hearing of children's cases. In 1898 there was apparently some attempt made to keep children apart from their criminal surroundings. An Act then provided that when an offence or crime is committed by or on a child, the *Juge d'Instruction* has the power to put the child in charge of a relative, charitable institution, or of *l'Assistance publique* during the hearing of the case. If an appeal is brought it comes for hearing before the Civil Tribunal "in chambers" (*en chambre du Conseil*).

According to Maître H. Decugis, *avocat à la Cour de Paris*, in the trials of young persons under eighteen years of age much importance is attached to whether the crime charged against them has been committed *sans discernement* or *avec discernement*, this being a question for the jury alone. If the former be decided they are acquitted, but nevertheless are taken care of, and educated until twenty years of age. If the latter is found against them viz. *avec discernement*, and they are over sixteen years, they are sent to one of the French Colonies (*une Colonie Pénitentiaire*).

Germany.—A recent work dealing largely with the subject of Children's Courts in America, *Die Strafrechtspflege in Amerika*, by Adolf Hartman of Berlin, submits that in a sense there are Children's Courts in Germany. A judge there has entire discretion never to imprison a child. In the German Civil Law there are rules or directions (*Normen*) which are similar to the powers given in the Children's Courts in America.

Under the New Civil Code of Germany of 1900, many of the very wide powers of State Guardianship given to a civil judge have now been extended to a criminal judge over children charged with crime. These recently extended powers of a criminal judge over criminal children are as follows: (1) the institution of state guardianship in Criminal Courts; (2) a more complete connection of state guardianship with the closer

parental guardianship; (3) unlimited power of punishment, and also the prerogative of mercy to the same extent as the sovereign has over adult delinquents; (4) power to deal with a criminal child either as a delinquent or as an object of protection or pity; (5) full power of supervision over the child while in prison or out of it. It has been proposed in Germany to recognise the American system of Children's Courts and also to transfer the powers of a civil judge over non-criminal children (children wandering, neglected, ill-treated, etc.) to the criminal judge. It is also suggested that relieving officers might be used as probation officers.

Italy.—There are no special Courts for children. There are, however, special institutions (a celebrated one at Pisa), and others at Milan, Turin, and other cities for delinquent or criminal children. Under Art. 222 of the *Codice Civile*, 1860, parents can apply to the *Presidente del Tribunale* to have such children, under eighteen years of age, placed in such institutions. According to the *Codice Penale* the punishment of children varies in degree according to the ages, between twelve and eighteen, eighteen and twenty-one.

The Netherlands.—At present there is no system of Children's Courts, but there is a system in vogue since 1897 of a very interesting character, explained by Dr. W. Roosegaarde Bisschop, and which seems to carry out an idea of Children's Courts to a considerable extent. A society for dealing with children's cases was formed in Amsterdam called "Pro Juventate," and has since been extended to The Hague and Rotterdam. The members of the society are formed into three groups: (1) members who contribute to the funds; (2) lawyers, thirty in number; (3) those who are willing to be guardians of the children.

Whenever there is a prosecution against a child or young person under the age of eighteen the prosecutor gives notice to the secretary of the society, who immediately communicates with one of the society's thirty lawyers, who sees the parents and defends the child or young person. The lawyer always informs the judge that he appears on behalf of the society, and that if he, the judge, decides not to punish, the society will take charge of the accused. One of the members of the third group of the society is then communicated with to become the guardian. The Dutch law has recently undergone considerable changes in the matter of youthful offenders. The age limit (ten years) under which children could not be punished has disappeared, and in its stead a provision has been made leaving a considerable amount of liberty to the judge not to punish young criminals under the age of sixteen, but to hand these over to their parents, or—if they have not yet reached the age of eighteen—to the Government. In the latter case they are either sent to a reformatory school or placed at the disposal of the above-named society in order that they may receive a guardian, in either case until they have reached the age of twenty-one years.

Norway.—There are no Children's Courts. The subject is being con-

sidered, and the more general subject of delinquent and destitute children is being much discussed. There is already some special legislation dealing with delinquent children, and there are three special schools for the careful training of such children. These schools are situated in the country. They have done much good in decreasing the numbers of criminal children in a striking manner since their establishment.

Neglected children are also specially cared for. There is a special board of each local authority (*Vaergeraad*), who can provide for the education of such children in place of their parents.

Spain.—No definite information is obtainable. There does not appear to be any legislation as to children's cases, badly as such legislation is needed. Education in Spain is not compulsory, and the number of delinquent and neglected children must be considerable, as is obvious to all travellers from the hordes of vagrant children which swarm in every city, town, and village.

Sweden.—By a law which came into force in 1905, there is established in every school area a Children's Vigilance Committee for the surveillance of degraded or morally neglected children.

A Swedish barrister has recently gone to America to study the system of Children's Courts and the probation system. The Swedish Government and people are much interested in the reform in children's trials already attempted in England. The question is being widely studied and discussed, so that Children's Courts will possibly be established within a short time.

Switzerland.—No actual Courts exist. In some cantons children under twelve or fourteen (the age varies in different cantons) are brought before the school authorities and punished with ordinary school punishments. After the above ages children are brought before the ordinary Courts, but the punishment is different from that to which adults are subjected, and in some cantons a first offence is never punished, and only a warning administered.

Conclusion.—The world-wide movement in favour of Children's Courts, thus briefly summarised, is a very remarkable one. It is a recognition of the child as a moral factor of the highest value in the national life. In it we see the nations putting, so to speak, a child in the midst, and by common consent declaring that here in this child and its welfare is centred the hope of each community. But Children's Courts are not the only point in which Courts of Justice are capable of improvement. A low-toned press is the disseminator of much harm. The publication of crimes leads to imitation. Young people of the lowest class often glory in their shame, in their own vicious lives and surroundings, and a trial or a charge before a Bench gratifies their morbid taste for notoriety. Indirectly Children's Courts will do much to check such evil influences; directly they will save children from contamination, and avert the life-long stigma of a criminal conviction.

CONFLICT OF LAWS WITHIN THE EMPIRE: BANKRUPTCY AND COMPANY WINDING-UP.

[*Contributed by* PROFESSOR HARRISON MOORE.]

English Bankruptcy Acts and the Colonies; Reputed Ownership.—Amongst the few attempts made by the Imperial Parliament to legislate in its Imperial capacity in matters of private law, the Bankruptcy Acts have a prominent place. While the Acts are full of machinery and procedure which are clearly applicable only to England, Ireland, or Scotland, it has long been settled that they vest in the trustee the property of the debtor, whether real or personal, situated in any part of the British Dominions, and as a consequence thereof a discharge in England (and presumably in Ireland or Scotland) is a discharge in a paramount jurisdiction, available throughout the subordinate jurisdictions of the Empire. A limitation upon the vesting of the debtor's property is suggested by Jessel M.R., in *Ex parte Rogers*, 1881, 16 Ch. Div. 665, 666, that the Bankruptcy Act "only passes immovable property in the colonies according to the law of the colonies," an observation which it is submitted means only that the trustee must complete his title as transferred according to the manner if any (as by registration of title) prescribed by the *lex loci rei sitæ*; and the principle appears equally applicable to movables. A question then arises—does the Imperial Law or the local law determine what is the property of the debtor? Upon general principles the trustee succeeds to no more than the interest of the debtor in the property, and that interest is determined by the *lex loci rei sitæ*. But the latter expression in this connection may beg the question, for the English law is not less than the local law part of the law of the place. At the same time it must be remembered that any Imperial operation of the Act is simply a matter of statutory construction —there is nothing in the Imperial relation which requires it to operate in the colonies by necessary intendment—and as already stated, it is obvious that the greater part of the Act is capable of operating only in England.

In 1895, upon full argument and consideration, the Supreme Court of Victoria decided that the order and disposition clause of the Act of 1883 does not apply in the colony. (*The Federal Bank of Australia, Limited*, v. *White*, 21 V.L.R. 451.) The majority of the Court (Madden C.J.

and Holroyd J.) held that the Act vested in the trustee only the debtor's *own* property in the colonies; that it did so by express words whereby property of the bankrupt was defined to include all his property, whether situate in England or elsewhere, and that the omission of special words of extension in relation to goods in the debtor's possession, order, or disposition was significant of an intention not to extend the Act to such goods out of England. Holroyd J. observed: "It seems to me a strong presumption to make against a common cause of interpretation that the Imperial Parliament meant in a statute relating to bankruptcy in England to impose penalties of this kind on persons not resident in England and not directly amenable to the jurisdiction of the English Courts" (p. 472). A strong dissenting judgment was delivered by à Beckett J., who considered that as s. 44, subsecs. (1) and (2), clearly extended to property in the colonies, special words of restriction would have been used in subsec. (3) if it had been intended to restrict that subsection to goods situate in England. He also pointed out that policy, not less than literal construction, would extend the operation of the clause, as credit might well have been obtained on such reputed ownership, and the exclusion of the goods from the assets would diminish the fund to which Australian as well as English creditors had to resort.

Some other provisions of the Bankruptcy Act were passed under review in the same case. Madden C.J. and à Beckett J. were agreed that s. 43, providing for the relation back of the trustee's title to the act of bankruptcy, applied in the colonies to dealings with property declared by s. 4 to be acts of bankruptcy, whether done in England or elsewhere, so as to avoid such dealings. But nothing is suggested as to the effect generally of an act of bankruptcy (whether it be amongst those which may be committed in England or elsewhere, or not) upon subsequent dealings with colonial property before the date of the adjudication. Probably the majority of the Court would have treated the absence of express words as conclusive of the restricted operation of the section, and would have held that the English trustee's rights, like those of a foreign assignee, did not relate back, but attached only as from the date of the order. But it is submitted that the opinion of à Beckett J. in the Federal Bank case expresses the true construction that the Imperial Act having laid hold of colonial property for division in the bankruptcy, the provision of the Act affecting property should as far as possible be regarded as operating uniformly in the several parts of the Empire. It may also be noticed that s. 43 is placed in the Statute under the heading "Property available for payment of debts," and as already observed "property" includes property in England or elsewhere. The two members of the Court referred to are also agreed that ss. 147 (avoidance of settlements) and 48 (avoidance of preferences) affect property in Victoria; and it cannot be doubted that such transactions are within the operation of the Act, wherever they take place (s. 4, c).

The question of the avoidance on an English bankruptcy of settlements or conveyances of colonial property was recently before the Supreme Court of Victoria in *Niven* v. *Grant*, 1903, 28[1] V.L.R. 639. The action was one by the trustees of a person adjudicated bankrupt in England in 1901 to obtain a declaration that certain transfers of property in Victoria, made in Victoria by the debtor in 1893 to his wife, were fraudulent and void under 13 Eliz. c 5. The defendant contended that the English trustees could not maintain the action in Victoria. The Court upheld the title of the trustees under the Imperial bankruptcy to recover by action in a Victorian Court property which as they alleged was at the commencement of the bankruptcy property of the debtor by the local law, the Statute 13 Eliz. c. 5 being part of the law of the colony. It should be noticed that here the transfer was alleged to be avoided not by any operation of Imperial law, but under the local law, the Statute 13 Eliz. c. 5 being part of the common law of the colony.

An illustration of a provision of the Bankruptcy Act affecting property which appears to exclude colonial property is that of ss. 45 and 46, defining the rights of the execution creditor and the trustee in bankruptcy. These sections, dealing with executions, attachments, appointment of a receiver, and the duties of the sheriff, plainly point to the known machinery of a definite system of Courts, and not to the varying machinery of the several jurisdictions within the Empire.

The Aid of British Courts—Recognition of Insolvency.—As already noticed, the machinery of the English, Irish, and Scotch Bankruptcy Acts does not extend to the colonies, and the provisions of the colonial bankruptcy or insolvency laws apply only to proceedings instituted in the particular colony. The result is that a trustee appointed in the United Kingdom may often be without adequate means of pursuing his administration in a colony. This is to some extent met by the interesting, but it is believed little used, s. 118 of the Imperial Act of 1883, which requires all British Courts having jurisdiction in bankruptcy severally to be auxiliary to each other, and provides that an order of the Court seeking aid shall enable the other to exercise, in regard to the matters directed by the order, such jurisdiction as either the Court making the request, or the Court to which the request is made, could exercise in their respective provinces. In Victoria, the Supreme Court, after doubting whether the expression "British Court" applied to the colonies at all, came to the conclusion that the matters in which aid is requested must be expressly stated "not necessarily *seriatim* but describing the classes of Acts required to be done" (*In re Mann*, 1887, 13 V.L.R. 590. The order made by the English Court in Bankruptcy is set out at p. 591). The decision goes some way to explain the comparatively little use made of the section. In *Niven* v. *Grant* (*supra*) an unsuccessful attempt was made to treat the

[1] Appeal will be reported in 29 V.L.R.

section as restricting rather than enlarging the power of a trustee under the Imperial Act, for it was argued that the order of the English Court praying aid was a condition precedent to any proceedings by the trustee in a colony. *In re Fenton*, 1900, 26 V.L.R. 88, was a case in which it was not necessary to determine how far s. 118 would have enabled the Colonial Court to do what was required. Bankruptcy proceedings had been instituted in Victoria and in England (presumably the Victorian proceedings were prior in time to the English, otherwise it is difficult to see how any property of the debtor came into the hands of a Victorian trustee); the trustees had been in communication, and had found what amount of assets could be required in each country to secure an equal distribution among the creditors who had proved there. To carry out the distribution in the manner proposed, the Victorian trustee moved for an order of Court authorising him to forward to the English trustee a sum of money sufficient to pay dividends equal in amount to those paid in Victoria. The order was refused, as one beyond the power of the Court, leaving the rights of creditors in England to be adjusted by the more clumsy method of proving in the Victorian insolvency, upon bringing into hotch-pot what they had obtained elsewhere. The Court expressed no opinion as to their power to make the order if requested under s. 118. It may be mentioned that Mellish L. J., *in re O'Reardon*, 1873, L.R. 9, Ch. 74, 77, referring to s. 74, a corresponding section in the Act of 1869, thought there was power to make such an order.

From the decisions in *Ex parte M'Culloch*, 1880, 14 Ch. Div. 716, and *Ex parte Robinson*, 1883, 22 Ch. Div. 816, it may be concluded that an English adjudication would not be a bar to insolvency proceedings in a colony, though by reason of the adjudication there might be no assets left in the debtor in the colony. What should be done in such a case would be very much in the discretion of the Court: it might well be convenient to keep the colonial proceedings alive so that the machinery of the local law should be available; the more so if the view of the Victorian Court that orders for assistance under s. 118 must be specific and not general is acted upon elsewhere. The course to be taken upon concurrent administration is not too clearly settled, as is shown in the judgments of the Court of Appeal *in re Artola Hermanos*, 1890, 24 Q.B.D., 640.

Some of the colonial legislatures and their advisers have been sufficiently alive to the importance of making the machinery of the insolvency laws available whenever it may be required. Victoria (Insolvency Act, 1890, s. 37 (vii.)); New South Wales (Bankruptcy Act, 1888, s. 4 (i.)); Queensland (Insolvency Act, 1874, s. 44 (14)); New Zealand (Bankruptcy Act, 1892, s. 162), following the precedent of the English Bankruptcy Act, 1861, s. 75, provide that an order in insolvency made in any Court in the British Dominions shall be treated in the colony as an act of insolvency. Some questions of jurisdiction which may arise out of these provisions do

not appear to have been anywhere determined. They are of two kinds, one relating to the jurisdiction of the first Court, the other to the second. Is it necessary that the first Court should be a "Court of competent jurisdiction"—*i.e.* one whose jurisdiction is upon general principles entitled to extra-territorial recognition? The New South Wales Act expressly provides that the "British Court" shall be a Court of competent jurisdiction, though it may be doubted whether it uses the term in its international sense; probably it means no more than that the Court should be a Court having jurisdiction in its own law in insolvency and bankruptcy, what Professor Dicey calls the "proper court." Generally it may be said that in construing statutes dealing with the recognitions of rights and proceedings in other colonies, Colonial Courts have been inclined to insist upon a basis of competence in the international sense. In the case of bankruptcy, it is probably settled in English and Colonial Courts alike, that the recognition of a foreign bankruptcy depends upon the debtor being domiciled in the jurisdiction which makes the order (*in re Blithman*, L.R., 2 Eq. 23; *in re Hayward*, 1897, 1 Ch. 905; *Buisson* v. *Warburton*, 1872, 4 Aust. Jurist., 119). But this has reference simply to the bankruptcy as an assignment of the debtor's movables; other aspects of bankruptcy—the assignment of the immovables and the discharge of obligations—depends upon different principles. And the principle which determines the effect of a foreign insolvency in our jurisdiction does not directly apply and can hardly be extended by analogy to determine the grounds of the jurisdiction of the local Court.

The other question is—Is the order in insolvency in the "British Court" sufficient to enable proceedings to be taken in the local court without any further ground of jurisdiction over the debtor? The Act is done beyond the jurisdiction; is it necessary that the debtor should be a person subject to the local bankruptcy law, as by domicil, residence, or trade? Unlike the Imperial Acts, the Colonial Acts cannot be construed as binding out of the jurisdiction by reason merely of the nationality of the debtor. On the other hand, it is not certain that the strict requirement of domicil insisted on in the United Kingdom in the series of cases culminating in *Cooke* v. *Charles A. Vogeler Co.* 1901, *A.C.* 102, is followed in the Colonial Courts. In any case it may be suggested that for this particular act of bankruptcy, at any rate, no special condition of subjection to the jurisdiction should be insisted on. Whatever the theoretical risks of concurrent administrations in separate insolvency proceedings, the Court can by the exercise of discretion prevent serious conflicts, and the additional expense is probably more than compensated by the convenience of utilising the local insolvency procedure and machinery.

Winding-up Comity of the Courts.—It is curious that, without any statutory provisions, the Courts have established a greater *comitas* in the case of the winding-up of companies than in the matter of bankruptcy. The English

Companies Winding-up Acts have no Imperial operation. Though they relate to property in the colonies so that a creditor who lays hold of such property may be made to account in England (*Ex parte Scinde Rly. Co.*, 1874, L.R. 9 Ch. 557 ; *Flack's Case* [1894], Ch. 369) and though they bind "all creditors," they extend no further than the power of the English Court to enforce them extends, and operate in the colonies in no other way than in a foreign country (*New Zealand Loan and Mercantile Agency Co.* v. *Morrison* [1898], A.C. 342, where a discharge in English winding-up proceedings was held to be no bar to an action in Victoria on a Victorian debt). Whatever may be the case in bankruptcy, the doctrine of principal and auxiliary proceedings in the case of the winding-up of companies is well established, and the proceedings in the domicil are principal. (*Commercial Bank of South Australasia*, 33 Ch. Div. 174 ; *North Australian, etc., Co.* v. *Goldsborough*, 61 L.T. 717 ; *in re Federal Bank of Australia*, 1893, 62 L.T. Ch. 561 ; *in re English, Scottish and Australian Chartered Bank* [1893], 3 Ch. 385, 394, per Vaughan Williams J., and see Palmer's *Company Precedents*, vol. ii., pp. 11-112). The question of additional expense caused by separate winding-up proceedings has been met in England, as is pointed out in the *Federal Bank* case, by an Order 1892 under the Companies Winding-up Act, 1890, sanctioning a reduction of fees in cases where the head office of a company is situated out of England. Amongst the means whereby the several Courts aid each other in liquidation proceedings is the transmission of assets from one jurisdiction in which there is a surplus to another in which there may be a deficit, and in doing so they have not felt the difficulty which oppressed the Supreme Court of Victoria in insolvency (*In re Fenton*, supra). The subject was carefully considered by Sir Samuel Griffith C.J. *in re Alfred Shaw and Co. ex parte Mackenzie*, 1897, 8 Queensland L.J. 93. The company was domiciled in Victoria, and was there in course of voluntary liquidation, and winding-up orders had been made in England and Queensland. An application was made to the Queensland Court by the Queensland liquidator for leave to send money to the English liquidator for the purpose of paying a dividend to the creditors who had proved in England. Griffith C.J. observed that several orders had been made by the Supreme Courts of New South Wales and South Australia for transmission of funds by local liquidators of companies domiciled in Victoria to the liquidator in that colony, and in accordance with that practice he would have had no hesitation in forwarding assets to the liquidator in the domicil. But in this case the application was for the transmission of funds from one auxiliary administrator to another ; and therefore he ordered the motion to stand over in order that the Victorian liquidators might appear, intimating that if they concurred he would make the order prayed, with the condition that, as the assets were to be transmitted to an auxiliary administration, the order ought to be in such form as to impress the fund with the trust to be created.

Reciprocal Enforcement of Judgments.—The whole subject of the

reciprocal enforcement of and aid to judgments and orders within the Empire was considered at the Colonial Conference in London in 1887. The Board of Trade had in 1885 expressed to the Colonial Office the opinion that as it might be desirable to extend to the colonies by a reciprocal arrangement the practice whereby bankruptcy proceedings in any part of the United Kingdom were made operative in other parts (ss. 117-119, Act of 1883), and the power under s. 14 to suspend proceedings in one country of the United Kingdom whenever it appeared that the proceedings could more conveniently take place in another country. The result of this suggestion was that a Bill was drafted by Mr. F. T. Piggott going far beyond it and covering the whole range of the Judgments Extension Act, 1868, the Bankruptcy Act, 1883, s. 117, the Companies Act, 1863, s. 122, and the Probate Acts, 1857 (ss. 94 and 95) and 1858 (s. 12). To this draft the Board of Trade at first demurred on the ground that it was dangerous, without regard to considerations of the justice and convenience of the particular case, to enact that any colonial order in bankruptcy should "attract to itself proceedings within the United Kingdom and must be enforced by the Courts of the United Kingdom," but these fears were not shared by the Law Officers of the Crown, and the objections were withdrawn. Eventually, a separate Bill for Bankruptcy and the Winding-up of Companies was brought before the Conference by the late Sir H. Jenkyns. It enabled the Crown, on being satisfied that reciprocal arrangements corresponding with those in the Bill had been made in a British possession, to apply the provisions whereby the colonial order in bankruptcy should operate in the United Kingdom as though made there; and power was given to the English Court to order which administration should be deemed the principal administration, "having regard to the residence of the majority of creditors and their number and value, the situation of the property of the bankrupt, the places and manner in which he carried on business and all the circumstances of the case." In case of a conflict between the orders of the Court in the United Kingdom and of the Colonial Court as to the place of principal administration, any person interested was to be at liberty to petition the Judicial Committee, and an Order in Council thereon was to bind both Courts. There was a provision for aid by the Courts of the United Kingdom similar to that in s. 118 of the Act of 1883, which does not at that time seem to have been treated as operating in or in relation to the colonies.[1] Finally, the difficult matter of discharge was dealt with by three different proposals—that the colonial discharge was to have effect in the United Kingdom as if granted in the United Kingdom; that it was to have the same effect in the United Kingdom as it would have in the colony; or that it should be left for the Court to determine whether a discharge should be granted having regard to the principles upon which a discharge is granted in the United Kingdom. The same system was made applicable to the winding-up of companies, but

[1] Proceedings of the Colonial Conference, 1887, vol. ii., pp. 27, 28, 41 [c. 5091—I].

it was provided that the principal proceedings must be in the Court of domicil. A second draft provided that a colonial discharge might be registered in the United Kingdom and should have like effect in the United Kingdom as if granted there, subject to this, that if the debtor were domiciled or resident in the United Kingdom the Court might suspend his discharge or grant it only upon conditions.

It will be noticed that these proposals carefully avoid the exercise of any permanent power. The Bill was one for governing in the United Kingdom the operation of bankruptcy proceedings of those colonies which had made reciprocal arrangements, and each colony was left to determine what arrangement it would make for giving effect to the bankruptcy and winding-up proceedings in the United Kingdom. The fact that there was an existing law of Imperial operation so that colonial property was vested in the English, Irish, or Scotch trustee, and that a discharge in the United Kingdom was a discharge throughout the British Dominions was either ignored or regarded as a matter to be considered by the colonial legislatures in making their own arrangements. No attempt was made to provide for the reciprocal enforcement throughout the Empire of the bankruptcy proceedings in any part thereof as distinguished from enforcement as between the United Kingdom and a colony. An alternative scheme presented by Sir Samuel Griffith (now Chief Justice of Australia) was founded on a limited use of the paramount power, and was intended to operate in all parts of the British Dominions to which it should be applied by Order in Council. The principle of the scheme was the definition of a competent jurisdiction in bankruptcy for Imperial purposes—ordinary residence or carrying on trade, or having property in a country—and a discharge in such a jurisdiction was to be a discharge of all debts wherever contracted, except only such debts as were contracted in other jurisdiction within the British Dominions in which the debtor had also been declared bankrupt. In case of adjudication in more than one competent jurisdiction, each jurisdiction would administer the property there and apply it in the first instance to the satisfaction of debts contracted there—a principle not generally approved; subject to this any creditor might prove in any jurisdiction, and the several trustees or other officers in bankruptcy were specially empowered to send surplus assets to other jurisdictions. Assets situated in a part of the British Dominions in which there was no adjudication were to vest in the officer appointed under the first adjudication. No formal conclusion was arrived at on the subject, and the Conferences of 1897 and 1902 were engaged upon more essentially political matters.

BARGAINS WITH MONEY-LENDERS.

[*Contributed by* T. Baty, Esq., D.C.L.]

The Usury Laws.—In 1897 Mr. Bellot published, in collaboration with Mr. R. J. Willis, a work on *Bargains with Money-lenders*. It possessed the virtue which some people say that international law possesses—that of making itself obsolete: for the recommendations of the authors were taken up by the legislature, and became the foundation of the Money-lenders Act, 1900. A new situation was thus created. Mr. Bellot deals with the subject under its altered conditions in the volume before us.

It is much more than a mere second edition of the former work, not only because of the revolution introduced by the Act of 1900, but also because the author has incorporated in the volume an account of the law of money-lending in the various provinces of British India and the principal colonies of the United Kingdom, not forgetting an exposition of the Roman-Dutch law received in Africa and Ceylon. It is for this reason that the treatise is of great importance for the student of comparative law. Mr. Bellot carefully digests the decided cases reported in the courts of all these possessions, at the same time providing a clear and reasoned exposition of the law of each. Long extracts from the judgments are inserted. A final chapter deals with the conflict of legal rules in different countries, and is brought well up to date, including a reference to *Shrichand* v. *Lacon*. In that case Ridley J. held that the British Act was not intended to apply to an Indian contract, just as in the still more recent case of *Moulis* v. *Owen*, Darling J. held that the English Gaming Acts were not directed against foreign betting. The detailed account of Indian and colonial systems which the author gives invests the book with a quite unique value both for the scientific jurist and for the practitioner. In these days of rapid communication and frequent intercourse with distant places, it must be of great service to be able to turn to a reasoned statement of colonial law, accompanied by the *ipsissima verba* of colonial judges.

The earlier portion of the book is occupied with a similarly full digest and discussion of the British and Irish law, together with an historical introduction, in the course of which the origin and fortunes of interest and usury are traced, from Assyria to Barbados, with great wealth of learning. The money laws of England, and the principles of legislation in respect of interest, are the subject of special and close investigation.

On the speculative side of the problems raised by the taking of interest, the author appears to justify State interference in certain cases, on the ground that the weaker party is damnified by the contract, and all the State suffers with it. But surely the argument begs the question: if the contract is annulled, the stronger party is damnified, and all the State suffers with it. We come back to the point—"Is the damnification just?" In all contracts the parties are, in a sense, on equal terms: the one wants something which the other can refuse. His desires drive him to contract, just as they drive the most necessitous borrower. ("Freedom of contract" is of course a somewhat specious name for a certain kind of State compulsion. The State is doing something more than protecting persons and property when it enforces extravagant promises. Accordingly, it generally declines to enforce what are called "penalties"; and usurious interest has much in common with them; indeed, Mr. Bellot points out that it is, in India, relieved against as such).

The real strength of the argument against usury (except in a court of morals) does not lie in the case of the necessitous. It is better to be able to borrow at £200 per cent. than to be unable to borrow at all. Its strength lies in the hard case of the inexperienced, who (1) do not know what they are doing, or (2) are unaware that they could obtain much better terms elsewhere. In the first of these cases there is generally gross negligence on the part of the borrower. The inexperience which is unaware that better terms could elsewhere be had is of a different complexion. But if the law is to embark on an inquiry, in every case of contract, as to the means of knowledge possessed by the parties as to the financial and economic conditions of the district, litigation would never be at an end.

The case is the ancient and perennial one discussed by Cicero with relation to the merchant who obtained an extravagant price for his corn by concealing the fact that other corn-ships were in the offing. Mere extravagance and inexperience should not induce us to re-open such transactions: for it is of the first importance that every one, inexperienced or experienced, should regard it as a serious matter to enter into a contract. The persons who have most frequent recourse to extravagant borrowings are those whose only capital is their character, and those whose only capital is their friends' characters. Those who trade on their friends' characters, and who incur debts in the expectation that they will be paid for them, are not entitled to very much consideration. Mr. Bellot instances the cases of young men who are induced to bet by the facilities afforded by money-lenders. We cannot affect to regret that such persons should be unable to borrow at 10, instead of 50 per cent. It may be said that if "unconscionable" interest is reducible by the Courts, they will be unable to borrow at all; but in that case what is to be the fate of the honest, necessitous borrower, who is, in future, to have cheap advances? The latter class—those whose capital is their character—are seldom unable to obtain financial

assistance from unexceptionable quarters, if there is a reasonable prospect of repayment. If there is no such prospect, they ought not to have the money. If nobody of any financial respectability knows them well enough to trust them, is it likely that they will be able to obtain better terms than a money-lender will accord them?

The only difficulty arises in the case of persons who could, as a matter of fact, obtain financial assistance on better terms, but are ignorant of the fact, or, from motives of false pride, decline to take advantage of it. It does not seem to us that the money-lender is to blame in making the borrower pay what he chooses for the indulgence of his super-sensitiveness: so we arrive at the sole case worthy of real respect—that of the friendless and inexperienced person, who takes it for granted that the money-lender's terms are the best to be had. Are these the class who are taking advantage of the new Act? One sees many cases reported of persons repudiating their debts, who have borrowed to gratify extravagant tastes, or to bolster up a hopeless trade. The writer does not remember one of a person in genuine need of money who has done so. Unless inexperience is to be treated as a legal disability—(and there is much to be said for the *Conseil judiciaire* in the case of a *prodigus*)—we must be content to risk the occurrence of a few cases in which the inexperienced use their independence to their own hurt.

Competition, the Remedy.—The true remedy for the evils of money-lending is the active competition of honest money-lenders: *i.e.* of banks which make it their business to lend, rather than to receive money—in short, free banking. Many money-lenders, as things stand, exist largely to supply people with money who ought not to have it—*i.e.* who are not at all certain to repay it. They naturally charge what they can, and, as Bentham long ago remarked, they will insure themselves against legal risks by charging still higher rates. To allow a wholesale impeachment of transactions as unconscionable is simply to put a premium upon incompetence, without any corresponding advantage.

As Mr. Bellot states in the case of Norway (p. 105): "During the first half of the nineteenth century usury was a most serious evil, and the old restrictive legislation was quite powerless to suppress it. Although the old usury laws were repealed, and usury made a criminal offence, the evil has been more successfully met by the establishment of agricultural co-operative credit banks in almost every parish." In Servia and in Ireland the same principle of self-help seems to have had equally good results. The Irish credit banks are said to have made, so far, only one bad debt.

The present reviewer holds no brief for the money-lender, and is quite willing to admit, without prejudice, that he is often not a very lovely character. But it is of no use harassing the business so that no decent man will go into it. If money-lending is made a business which can best and most profitably be carried on by men who do not mind six months' jail, or if it is driven into obscure channels where it can be carried on without

legal interference, the lot of the necessitous borrower under such conditions will not be a pleasant one to contemplate. Under the recent Act, which throws the responsibility of revising contracts on the judges, the most divergent decisions have been given. The consequence has been to throw the law into complete uncertainty. This cannot be called a satisfactory state of things. It has introduced an aleatory element into contracts of loan, but it is difficult to see that this is any advantage.

The greatest blame in the matter attaches to that technical rule of English law according to which it is not only difficult, but impossible to contradict or alter a written agreement. It is very apparent that some borrowers, in point of fact, never do agree to the extortionate and absurd terms of the documents sued upon by lenders. So far from there being any *consensus ad idem*, or even any real expression of intention, there is not even an apprehension of the real effect of the instrument. This seems to be the foundation for the jurisdiction to cancel written contracts on the ground of innocent misrepresentation; it is impossible to import the representation into the written contract, which is apparently complete without it; and the only course is to rescind. In enforcing as sacred the terms of any signed writing, the law goes far beyond enforcing contracts as agreements. For in many cases there is no real agreement whatever. The law merely enforces a kind of *juristische monstrum*—a contract without agreement or understanding. And it is impossible to set up the defence of misrepresentation when the terms of the document, if they had been carefully read, would have revealed the true nature of the bargain. It is well that attempts to escape from a formal expression of intention should be closely watched, and the present writer would be sorry to encourage the idea that a consensus of wills is essential to a valid contract; but this case of documents signed by inexperienced persons under pressure is precisely one of those in which every effort should be made to arrive at an ascertainment of the intention really expressed. It is one thing to say that a person who borrows at 3,000 per cent., under whatever stress of circumstances, should be held to his bargain; it is quite another to say that a person who signs a paper should be held, in all cases and under all circumstances, to have expressed an intention to abide by all its terms.

It is somewhat surprising that Ihering, the apologist of Shylock, should be quoted as opposed to unfettered freedom in commerce, which he is said to have declared to be "a license to wolves to fall upon the sheep." (Parenthetically, we can assure the author that "such vigorous language from a sober German professor" is not unusual when the professor's name happens to be Rudolph von Ihering.) Ihering's asserted opinion is the only ground which is given for the statement that the abolition of the usury laws on the Continent "proved a complete failure." We hear (*e.g.* at pp. 19, 91, 94) of the "intolerable abuses" which followed, on various occasions, the repeal of usury laws. But it does not follow that the latter state of

borrowers was really worse than the first. At p. 50, the author remarks that the repeal of the usury laws in England left the evils of usury "as rampant as ever"—*i.e.* as rampant as they were under a system of regulation. On his theory, they ought to have been much worse. For all that appears, the prevalence of hardships may have been reduced on balance, instead of being increased; and, indeed, the author admits that the removal of the restrictions on usury coincided with a period of commercial prosperity.

Economists frequently avail themselves of the term "exploit," used in a narrow and quite technical sense connoting blame. Mr. Bellot's definition of usury involves this secondary meaning, which we venture to think renders it inapplicable to ordinary use. An *impresario* "exploits" the public taste for chanted farce; but he is doing no wrong (except to Thalia, Euterpe, and Terpsichore). A dealer "exploits" the weakness of a collector for broken pots; but there is no harm in it.

It is not always possible to follow Mr. Bellot in matters of economic theory. On p. 84 he says: ". . . As a rule the economic laws of supply and demand determine the rate of interest. This is certainly the case with the well-to-do borrower, but it is far otherwise with the necessitous borrower. For him the rate of interest is fixed by the necessities of his condition and the rapacity of the lender." How can it be said that there is no competition between money-lenders, when the advertisements of half a dozen can be seen in any county newspaper? We must repeat that it is of no use as an argument in favour of the refusal to enforce usurious contracts to say that society is interested in its members' contracts. Of course it is; and that is why it enforces them. To allow an individual to escape from the consequences of his foolish, definite promise, would hurt society more than to make him reap the results of his folly. At the same time, we cannot appreciate Mr. Bellot's conception of progress, according to which its aim is a retrogression to the state of "primitive communities, in which the family, the clan, or the tribe was everything, the individual nothing."

But those who are not prepared to accept the author's economic views —which, after all, are not extreme—will find the work none the less useful on that account. For the historic and legal matter (which last is the important thing in a law-book) is exceedingly valuable and worthy of warm commendation. We do not know of any work on any legal topic in which so broad an outlook, extending over so many various quarters of the globe, is taken. We may dissent from Mr. Bellot's views in points of detail—(thus it can hardly be right to leave the facts to a jury when the Money-lenders' Act expressly leaves the evidence to be appreciated by "the Court") —but his treatment of the decisions leaves nothing to be desired in point of fullness and research. No better manual could be put into the hands of the practitioner; and, as a model for that rising generation of writers who desire to free English law from the deserved reproach of insularity, one can think of nothing to equal Mr. Bellot's book.

REVIEW OF LEGISLATION, 1905.

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REVIEW OF LEGISLATION, 1905.

INTRODUCTION.[1]

VARIED and picturesque is the collection of Acts and Ordinances presented for us in this Review of Legislation for 1905. No Old Curiosity Shop could exhibit—to the superficial eye—a more singular jumble. But a new interest is awakened when we begin, in Tennyson's words, to

> Watch the main currents how they run,

to recognise in these Acts and Ordinances the outward and visible signs of forces moulding the lives of nations.

"In natural science," says George Eliot, "there is nothing petty to a mind that has a large vision of relations." The inspection of bake-houses (Trinidad and Tobago) may seem a small matter, but it assumes a new significance when we look at it as part of a large movement now in progress making for the health of the peoples. The drift of this movement is very marked. Perhaps the most notable evidence of it is the elaborate "pure-food" Act passed by Victoria (see p. 443). Cape Colony has been equally rigorous in restricting wines and brandy to the pure article (see pp. 477-80). In Trinidad and Tobago the Governor in Executive Council is empowered to fix a standard of purity for food and drugs. The Transvaal prohibits the importation of opium; Victoria—still more strictly—the smoking of it; Fiji the importation of substitutes for bhang. South Nigeria compels vaccination, and pays no respect to the wishes of the "conscientious objector." British Guiana deals with the growing dangers of leprosy; and in the West Indies the Intercolonial Convention has formulated quarantine regulations against cholera, plague, yellow fever, and smallpox. Victoria, Natal, and New Zealand go on with the early-closing shop legislation.

The licensing of a bowling-alley (Quebec) seems again a small matter; but when the whole volume of legislation is studied, it is evident that this is part of a large movement for bringing many matters within the sphere of legislative regulation. British Columbia requires a licence for non-native

[1] The Editors much regret that owing to illness Sir Courtenay Ilbert has not been able to contribute the Introduction this year.

commercial travellers; the Bahamas for keeping a public billiard-table; Cape Colony for keeping servants' registries; Natal for a native eating-house; St. Helena for stallion donkeys; St. Christopher and Nevis for selling cotton; British Columbia for selling nursery stock; the Transvaal for certain kinds of trading. In Northern Nigeria persons desiring employment as domestic servants must obtain a licence of good character from the police. There is an analogous tendency towards the organisation of professions with a view to the elimination of the unfit. Medical practitioners are required to register (Straits Settlements, Bahamas, New Zealand), so are dentists (Jamaica) and pharmacists (Ontario).

Legislation as to children goes on as conspicuously as ever. The waste of infant life, as we know only too well in England, is appalling. Queensland has passed an Act which seeks to abate the evil. Infants under three are not to be received or adopted for reward unless the place is registered as a nursing home. Adoption of a child under three must be registered. Tasmania—following a now widespread movement (see p. 375)—provides for the trial of youthful offenders in some place other than the ordinary Court. Cape Colony empowers the Court to discharge a first offender with a reprimand. Queensland prohibits tobacco to juveniles under sixteen. It is gratifying to note the Act passed by Western Australia for the protection and care of the aboriginal inhabitants. Bedouin organisation in Egypt and tribal representation in Sierra Leone are also interesting samples of legislation witnessing to a growing solidarity in the Empire.

A noticeable feature of recent legislation is the application of scientific methods to agriculture. Antigua makes elaborate provisions for the fumigation of imported plants likely to propagate disease: so does Dominica; British Columbia for the destruction of fruit pests; the Dominion of Canada for the inspection of seeds to secure their freedom from weeds; Egypt to preserve the cotton crop from the ravages of the cotton-worm. Queensland makes another vigorous attempt to deal with the rabbit pest, marsupials, and dingoes.

The legislation of France is this year specially interesting. It deals, *inter alia*, with the status of foreign insurance companies, recruiting for the Army, Courts for trade disputes, and the much-vexed relations of Church and State, all which are very clearly set forth by M. Faux. Germany has been establishing tribunals for disputes between mercantile employers and employees modelled on the trade tribunals; but what has been specially engaging the attention of the Government departments is a new Criminal Code and a new Criminal Procedure Code.

Switzerland has invented a new "post cheque" (see p. 418), drawn on the Post Office in the character of banker, which is likely to have a future.

Immigration is elaborately dealt with by Cape Colony, Barbados, and Jamaica; witchcraft, under the name of "fangay" in Sierra Leone, and

"obeah" in the Leeward Islands and St. Lucia, still calls, it seems, for legislative repression. Cyprus—as befits the island once consecrated to the worship of the Goddess of Beauty—has awakened to the importance of preserving its antiquities. New Zealand, leading the way as usual, gives privilege to confessions made to a minister of religion, and in civil matters to communications to a physician or surgeon.

When De Quincey in his early days was rambling about North Wales, he often, he tells us, repaid the hospitality shown him by cottagers by writing letters for them—sometimes love-letters for the young women to their sweethearts, and much they blushed as they intimated their wishes to their scribe. The professional letter-writer flourishes, it seems, in British Guiana, but the blushes which his compositions call up—or would call up if the illiterates knew their contents, their untruths, scandal and extortion —are blushes of just indignation, and the Legislature has had to intervene to rectify the abuse.

An Act which possesses an historic interest is that commemorating the Tercentenary of the Settlement of Barbados, when in July 1605 the crew of the English ship *Olive Blossom* landed and took possession of the island by erecting a cross and cutting in the bark of a tree the words "James K. of E. and this Island."

FOREIGN.

1. EGYPT.

[*Contributed by* W. E. Brunyate, Esq., *Khedivial Counsellor.*]

Laws of General Public Interest—37.

Agriculture.—Law No. 13 is designed to protect the cotton crop from the ravages of the cotton-worm, which in recent years have become increasingly serious. All leaves of cotton-plants upon which the eggs of the worm have been laid are to be immediately plucked and burnt. In cases in which the degree of infection is such as to constitute a public danger, the operation is to be performed under the supervision of the local authorities or, if necessary, by those authorities direct. All boys, accustomed to field labour, between the ages of ten and eighteen years, are rendered liable to be called out to assist in the work of destruction, being paid a daily wage, which is to be fixed by the local authorities in consultation with the local Committee of the Agricultural Society. The services of the boys may be placed at the disposal of individual proprietors, but in that case their wages must be paid over to the local authorities in advance and are distributed by those authorities. The cost of the operations is made a charge upon the land itself (up to a named maximum), and is to be recovered in the same manner as land tax.

Archives.—Law No. 14 transfers the care of the State archives from the Ministry of the Interior to the Ministry of Finance.

Beduins.—Law No. 36 creates an administrative organisation for Beduin tribes closely parallel to that of the ordinary village. Headquarters are to be assigned to each tribe in a determinate province. The Ministry of the Interior is to appoint one or more chiefs (*omdas*) for each tribe: where there are more chiefs than one, the tribe is divided between them. In every other province in which there are more than fifty members of the tribe, a sub-chief is to be appointed by the Governor of the province on the nomination of the chief. Representatives of the chief are to be similarly appointed for every Beduin encampment. Chiefs of tribes are exempted from land tax in respect of any five acres of land held by

them, so long as they hold office. A Commission for Beduin affairs, composed of representatives of the local authorities and of Beduin chiefs is to be instituted in every province. The only specific duties placed upon chiefs and their representatives are those of arresting Beduin offenders and giving effect generally to the orders of the police. The Governor of the province has disciplinary powers up to fine of £E1: the Beduin Commission has powers up to fine of £E5 and three months' imprisonment, subject to an appeal to the Ministry of the Interior. A Law of 1885, under which, when a Beduin offender could not be found, any near relative could be taken and imprisoned as a hostage, is repealed.

Criminal Procedure.—Law No. 4 provides for the trial of all crimes by Assize Courts composed of three judges of the Court of Appeal. The judgments of such Courts are open to recourse in cassation on points of law, but are otherwise without appeal. The decisions of the Court are, on general principles, those of the majority. The Courts sit at the seats of Central Tribunals, and there is normally a sitting once a month. In case of urgency, one of the judges may be replaced by a judge of first instance. The Court sits from day to day until the list is cleared. Prior to the new Law, crimes were judged in first instance by Courts composed of three first-instance judges, each chamber sitting normally once a week, with an appeal to three or to five judges of the Court of Appeal according to the gravity of the offence charged. Cases were sent direct to the Tribunal of First Instance by the magistrate of the Parquet who had held the inquiry. Under the new Law, all cases are referred by the Parquet to a committing judge (*juge de renvoi*), whose duty it is to see that the case is ready for trial and that all necessary witnesses are being summoned, and to fix the session at which it shall be heard, having regard to the convenience of the parties. In case of committal, he draws a charge, charges being governed by rules substantially identical with those of the Indian Code. If he is of opinion that there is no case for trial, he can dismiss the case, and his decision is open to no appeal on the facts, though open to recourse in cassation on points of law. The introduction of the new system in Upper Egypt was deferred until 1906, under a power reserved in that behalf.

Law No. 5 provides for the hearing of all outstanding appeals before the Court of Appeal by three judges. Law No. 6 transfers to the Central Tribunals all appeals from summary judges in misdemeanour cases; it provides, for the purposes of cassation, that all formalities shall, until the contrary be shewn, be deemed to have been duly observed in criminal trials, although their observance shall not be mentioned in the judgment or the record.

Law No. 9 provides for the preventive arrest, subject to a right to bail, of persons accused of customs offences who have not a known

domicile in Egypt or who are recidivists; and provides for the execution of the judgments of Customs Commissions notwithstanding appeal.

Finance.—Law No. 16 provides for the repayment of the Daira Sanieh Debt and the suppression of the international Daira Sanieh Administration created in 1877. Law No. 31 raises the limit for the compulsory commutation of the perpetual annuities (*faiez iltizam*) granted to the farmers of the land tax when they were bought out by Mehemet Ali. Law No. 34 is the annual Budget.

Firearms.—Law No. 15, which is applicable to Europeans, regulates the importation and sale of firearms and explosives.

Irrigation.—Law No. 21, which is the result of the conversion of the basin lands in Upper Egypt into perennially irrigated lands, renders the existing legislation as to restrictions upon the sowing of cereals in Lower Egypt during the early Nile flood applicable throughout Egypt.

Local Government.—Laws Nos. 20 and 23 create Mixed Municipalities for Tanta and Zagazig, respectively, on the lines of those already created for Mansura and Medinet-et-Fayoum.

Lotteries.—Law No. 10 prohibits unauthorised lotteries, and makes it an offence to hawk the tickets of such lotteries or offer them for sale or to bring such lotteries in any manner to the knowledge of the public. Authorised lotteries are, for the most part, charitable lotteries, more especially those of the benevolent societies of the various foreign Communities.

Mehkemehs.—Law No. 3 modifies, in an unimportant respect, the composition of the Supreme Mehkemeh of Cairo.

Mixed Tribunals.—Law No. 7 continues the existence of these Tribunals for a further period of five years. Law No. 12 recognises English as a judicial language on the same footing as Arabic, French, and Italian. Law No. 18 provides for the suppression of a useless register; and Law No. 19 amends the judicial tariff.

Port of Alexandria.—Law No. 1 modifies the limits of the port. Law No. 2 imposes dues on goods left on the quays for more than a specified time. A considerable effort was made by traders, who had found it more economical to leave their goods on the quays than to pay for warehousing them, to have the Law rescinded as being in conflict with existing commercial treaties, but without any success. Law No. 11 transfers the Port Administration from the Ministry of Public Works to the Ministry of Finance.

Post Office Savings Bank.—Law No. 8, approved by the Powers, declares Post Office Savings Bank deposits exempt from seizure.

Public Health.—Law No. 22 deals with precautions against rabies. It provides for the reporting of cases or suspected cases of rabies and the observation or destruction of all infected or suspected animals. In any city or province in which a case or suspected case has occurred, the

Governor may order that all dogs in public places shall be muzzled or led, or both muzzled and led. In such case, all dogs are to wear collars, bearing the address of their owners, and, when found without collars, may be seized and destroyed. The systematic destruction of stray dogs, which has been carried out for some years in the large towns, is expressly authorised.

Railways.—Law No. 25 deals with the organisation of the State Railways and Telegraphs, which ceased to be an international administration upon the coming into force of the Law as to the Public Debt of 1904. They remain attached to the Ministry of Public Works, and are placed executively under a General Manager; but a Railway Board is created which is responsible, subject to any general or special directions which may from time to time be given by the Council of Ministers, for the general oversight and control of management and working. The Board consists of the President of the Council of Ministers, the Financial Adviser and the Adviser to the Ministry of Public Works, together with one or more members nominated, with or without votes, for periods not exceeding two years at a time, by the Council of Ministers. The Board is apparently intended to occupy a position approximating to that of a Committee of the Council of Ministers assisted by advisers with special knowledge of the requirement of the service. No provisions are contained of a nature to take the administration out of the general budgetary conditions applicable to Government departments; but the composition of the Board is such that the reference of its decisions to outside authorities for approval is likely to be formal only.

Religious Communities.—Law No. 27, passed on the request of the notables of the Armenian Catholic Community in Egypt in agreement with their Bishop, approves a constitution for that community. The constitution is silent as to everything connected with the ecclesiastical organisation of the community, but treats of the administration of Church property and the exercise of jurisdiction in matters of personal status. The executive body is preponderantly lay, the lay members being elected by popular suffrage at annual meetings of enrolled members of the community. Doubts have been expressed, for which there would appear to be no sufficient foundation, whether legislation in such matters may not go outside the powers conferred on the Khedivate by the Imperial Ottoman firmans.

Taxation.—Law No. 17 provides for the collection of house tax in the town of Luxor. Law No. 33 modifies the limits of sundry towns for the purposes of that tax. Law No. 24 modifies the tariff of fishery dues in Lake Menzaleh. Law No. 30 abolishes all fishery dues in respect of fishing in maritime waters. Law No. 26 reduces the *ad valorem* customs duty on fuel, wood for building purposes, petroleum, cattle, sheep and goats from 8 per cent. to 4 per cent. Law No. 28 abolishes the Government salt monopoly. Law No. 29 reduces the light dues in Red Sea ports.

Law No. 32 provides for the postponement of the quinquennial census of date palms liable to taxation. Law No. 35 reduces sundry postal dues.

Wakfs.—Law No. 37 modifies the composition of the Superior Council of the Wakfs Administration.

2. FRANCE.

[*Contributed by* René A. Faux, Esq., *Avocat.*[1]]

Of all the various Laws and Decrees which have been passed during the year 1905, there are five which are of far greater importance than the others.

(1) The Law of March 17-20, 1905, regulating the control and supervision of Life Insurance Companies and generally of all enterprises connected with the duration of human life.

(2) The Law of March 21-23, 1905, on the Recruiting of the Army and on the reduction of the term of the Military Service to two years.

(3) The Law of July 12-13, 1905, concerning the Civil Competence of the Justices of the Peace.

(4) The Law of July 15-16, 1905, relative to the "Prudhommes" (Trade Disputes Court).

(5) The Law of December 9-11, 1905, on the separation of the Church from the State.

Amongst these laws, there is one which is of especial interest to foreigners, *i.e.* the Law on Insurance Companies, and I therefore propose first of all to devote my attention to this subject.

(1) **Life Insurance Companies.**—Up to the passing of the present Law, Life Insurance Companies were governed by various regulations.

The French Life Insurance Companies were regulated by the Law of July 24, 1867, Articles 66 and 67 of which provided that before commencing business, authorisation should be obtained from the Government, and gave the Government the right to supervise the conduct of the Company. But, in fact, the right of the Government to the supervision of the management of the Company was simply nominal.

Foreign Companies were regulated by the Law of May 30, 1857. According to this Law, all Companies formed in Belgium had the right to carry on their business in France, and the Government had the power of extending by a Decree the same favour to all the countries which would claim the benefit of it, and, as a matter of fact, the benefit of these dispositions had been claimed for by nearly all nations.

[1] Owing to illness, Mr. George Barclay has been unable this year to contribute his usual summary of French legislation; but, at his request, it has kindly been undertaken by a friend—a member of the French Bar—M. René Faux.

The Law of July 24, 1867, did not touch foreign Companies. They were therefore not obliged to comply with the provision which bound French Insurance Companies to obtain the Government's authorisation to carry on business, and they also escaped from any kind of supervision. At last Parliament's attention was drawn to the fact that it was impossible for the Government to supervise efficiently the management of French Companies, and also to the great inequality existing between French and foreign Companies as regards their formation.

Consequently, on April 26, 1902, an Extra-Parliamentary Commission was appointed by Mr. Millerand, "Ministre du Commerce." Its work was continued by a Special Commission of the Parliament, and lastly the scheme of the Law was put before the Parliament on June 17, 1902.

I do not think that there is a better way of making this Law clear to foreign minds than to quote the most important clauses thereof.

Art. 1. The present Law is intended to apply to all enterprises, either French or foreign, of any kind which make a contract the completion of which depends on the duration of human life.

Art. 4. In the articles of association of French joint-stock companies and partnerships having a sleeping partner, there must be one clause specifying that in case of loss of the half of the capital, such Companies are under the obligation to wind up.

Art. 5. French joint-stock companies and partnerships having a sleeping partner are obliged to have a capital equal at least to 2,000,000 francs., A Reserve Fund must be constituted by all such enterprises.

Art. 6. Foreign Companies as well as French Companies, but only with regard to policies made in France or in Algeria, must constitute mathematical reserves equal to the difference between the value of the engagements respectively taken by them and by the insured in accordance with certain regulations determined by a Decree.

Such enterprises will have to produce every year a comparative statement:

1. Between the effective mortality of their insured and the mortality provided for by the bills accepted for the calculation of their mathematical reserves and their tariffs.

2. Between the rate of their investments and the one which has been accepted for the above-mentioned calculation.

In case of a notable or repeated discrepancy bearing on one of these elements, the "Ministre" may require that the basis of the mathematical reserves calculation be rectified.

Art. 7. With regard to foreign enterprises, the securities representing the portion of the assets corresponding to the amount of the mathematical reserves and of the guarantee reserve as well as to the amount of the individual accounts specified in the first paragraph with the exception of the immovable property, must be deposited at the *Caisse des Dépôts et Consignations*, under the conditions provided for by Art. 9, s. 6. The mere

fact of this deposit grants a privilege on said securities to the insured in favour of policies subscribed or executed in France or in Algeria.

Art. 8. Such enterprises are under the obligation to produce to the "Ministre" periodical statements of the changes which have occurred in the composition of their assets.

Art. 10. Besides the "Ministre du Commerce" is constituted a Consultative Committee of Life Insurance, composed of twenty-one members.

Art. 11. Any enterprise of this sort is obliged: (*a*) to publish in French a yearly report of all its operations, together with statements and tables thereto annexed; (*b*) to produce the said report to the "Ministre du Commerce" and to deposit same at the Office of the Registrar of the Civil and Commercial Courts as well in the Department of the Seine as in the Department in which its head office is situated; (*c*) to deliver a copy of such report to any policy-holder or partner who may apply for it, charging not more than 1 franc for same; (*d*) to publish every year at its own expense in the *Journal Officiel* a summary report showing the general account Profit and Losses, the general balance-sheet and the general working of the current operations.

Such enterprises must also deliver to the "Ministre du Commerce" at any time and in the form and on the dates fixed by him, all documents or explanations which he may deem necessary.

They are subject to supervision of Sworn Controllers, who may at any time verify all operations of the Company, and the said Controllers shall be entirely independent of all other persons appointed by the "Ministre" from time to time.

Art. 12. Foreign enterprises must, as regards the operations which are regulated by the present law, have an office in France or in Algeria. They must also keep special account books for all contracts subscribed or executed in France or in Algeria. They are likewise obliged to appoint an Agent who has charge of the direction of all these operations and who shall be responsible to the "Ministre du Commerce." Such Agent must be domiciled in France and will be the sole representative of the Company as regards holders of contracts executed in France or in Algeria, and particularly as regards the signature of policies, memoranda, receipts, and other documents relative to operations.

Companies must deliver to the "Ministre du Commerce" a properly certified French translation of any documents in foreign language referring to its operations which he may require from time to time.

Penalties.—Any refusal on the part of the Company to comply with the regulations of the present law shall render them liable to penalties which are determined by Art. 14 to Art. 18.

Art. 23. The present Law is applicable to Algeria, the Islands of Réunion, Martinique, Guadeloupe, to French Guiana, the French Possessions in India and New Caledonia.

(2) **Recruiting of the Army: Military Service.**—The Law of March 21-23, 1905, modifies the Law of July 15, 1889, on the recruiting of the army and reduces to two years the duration of the service in the active army.

We are indebted for the present Law to the Parliamentary initiative. The framer of the Bill intended to reduce the duration of the active service to two years: (*a*) without lowering the degree of instruction of our soldiers; (*b*) without injuring the recruiting of our non-commissioned officers; (*c*) without diminishing the actual strength of our permanent effective force.

For this purpose, he has confined this reformation to the adoption of certain material dispositions:

1. Absolute suppression of exemptions.
2. Service of two years imposed as regards recruits who have been put back, passed afterwards as "able-bodied."
3. The incorporation of the contingent on October 10 at the latest, instead of on November 15.
4. The limitation of permissions to the cases provided for by the Law.
5. The increase of the number of re-enlisted non-commissioned officers.
6. The re-engagement of a certain number of corporals or privates.

New Art. 10 differs from the former by the introduction in the text of the law of paragraph 4 so worded: "All young men who are French according to the Civil Code and the laws on Nationality shall be inscribed on the lists."

(3) **Carriers. Transport Agents.**—The Law of March 17-29, 1905, adds a paragraph to Art. 103 of the Code of Commerce.

Art. 103 of the Code of Commerce is completed by a third paragraph worded in these terms: "Any contrary clause inserted in any carrier's delivery note, tariff, or any other document is null."

This addition aims more especially at Railway Companies. These, in fact, with the view of avoiding the application of Art. 103, have introduced into their tariffs certain conditions called "applicable conditions common to all special tariffs *Petite Vitesse*" (slow freight), amongst which is a clause reading as follows: "The Company will not be held responsible for losses or damages occurring in course of transit."

The application of Arts. 31 and 32 of the "Convention de Berne" to the carrying trade inland, did not give any good result. One might consider it as merely a platonic and sterile measure. On the contrary, the present law is a remedy as simple as it is efficient to the present situation. It does not alter in any way the principles by which our commercial legislation is regulated. Its object is to make the policy of the law more clear and to stop the improper construction which has been put upon it. By its declaring null any claim in opposition to the contents of Art. 103 of the Code of Commerce, it maintains the responsibility which attaches to the carrier

according to the nature of the goods and which constitutes an essential element of the contract to carry.

(4) **Justices of the Peace.**—The Law of July 12-13, 1905, has in view the regulation of: (1) the civil competence of the Justices of the Peace; (2) the organisation of the Courts of the Justices of the Peace, especially with regard to the qualification required to be appointed a Justice of the Peace as well as to the salaries of the Judges.

The extension of the Civil Competence is regulated by Arts. 1 to 17. The general competence is fixed at 300 francs without appeal for any personal or movable action, and at 600 francs with right of appeal (Art. 1). According to the law of 1838, the Courts of the Justice of the Peace were competent only up to 100 and 200 francs. The new law extends the competence of the Justices of the Peace to the litigations as regards registered letters and parcels, and articles of value, price of which to be collected or not (Art. 2).

By Art. 3 the competence is further extended as regards leases. According to the law of 1838, they were only competent in case of application for cancellation of lease based only on non-payment. According to the new law, the Justices of the Peace have jurisdiction in suits for cancellation of leases based on insufficiency of the furniture furnishing the houses and the total loss of the object hired.

In the matters enumerated in Art. 3, the law raises from 100 francs to 300 francs the final competence of the Justices of the Peace, without appeal. They are still competent up to any amount with right of appeal.

They are competent to decide on attachments on furniture removed without the landlord's consent.

For all questions regulated by Art. 3, the competence fixed by the Law of 1838 was exclusively applicable to leases the rent of which was not over 400 francs a year. The new law raises the amount in litigation as to which the Justices of the Peace are competent to 600 francs.

Moreover, competence on litigations relative to parcels is given to the Justices of the Peace by Art. 6.

Justices of the Peace are now competent for claims respecting alimony and maintenance up to 600 francs, although according to the law of 1838 they were only competent for claims up to 500 francs (Art. 7).

Actions relative to latent defects of a nature to set aside a contract of sale of animals (Art. 6); the claims relating to the recovery of dues for right of stands in markets, etc. (Art. 7); actions for validity and nullity of cash offers in Court, are now within the limits of their competence (Art. 12).

The new Law attributes to Justices of the Peace the right to decide on attachments of travellers' property within the limits of their competence.

It also empowers Justices of the Peace to proceed, in default of an amicable understanding between the opposing creditors and the party attached, to the division of the proceeds amongst the creditors *pro rata*, when the sums to be distributed do not exceed 600 francs principal.

Justices of the Peace, according to the new Art. 16, have also the power to authorise married women to appear in Court in case they cannot obtain such authorisation from their husbands. According to said Article, minors have also the benefit of this clause.

The new Law confers also a new jurisdiction to the Justices of the Peace, *i.e.* the right of deciding on civil actions for libel and slander with the exception of libel in the public press (Art. 6), when, according to the law of 1838, they were only competent for slander.

As it is easy to see from the above, this extension of the civil competence of the Justices of the Peace will have a very important practical result.

Under Chapter II. of the present Law there are regulations determining the number of judges, their qualifications, etc.

(5) **Legal Holidays.**—The Law of July 13-14, 1905, decides that whenever legal holidays fall on a Saturday, no payment can be demanded nor can any protest be made the day following these holidays; when they fall on the Tuesday, no payment can be demanded nor can any protest be made the eve of these holidays.

(6) **Trade Disputes Courts** ("**Prudhommes**").—The law of July 15-16, 1905, modifies the law of June 1, 1853. Under the Law of 1853, this tribunal was composed of an equal number of *Prudhommes Patrons* (masters' representatives), and *Prudhommes Ouvriers* (workmen representatives), but the president was alternately either a master or a workman.

As the list of the presidents is known three months in advance, it was a very easy thing either for the workmen or for the employer to set down his cause before the Court for a day on which he is nearly sure to have the majority on his side. It is unnecessary to point out how mischievous it is for a litigant to be able to make choice of his judges and wait to set down a claim until such claim shall be tried before those who have been most often elected by himself.

The new Art. 1 of the present Law provides with regard to cases in which the judges are equally divided in opinion, that such cases must be forthwith re-heard before same tribunal presided over by the Justices of the Peace of the district.

The competence of the *Prudhommes* is extended from 200 francs to 300 francs without appeal, but their competence with right of appeal is unlimited.

Amongst the regulations of the present Law, one of the most important is that contained in s. 4 of Art. 2, which declares that a counterclaim for damages based only on the principal claim is not to confer a right

to appeal where the principal claim itself comes within the competence of the Trade Disputes Court. This prevents any one from avoiding the jurisdiction by filing a counterclaim based only on a pretended damage caused by the principal claim and by withdrawing his counterclaim afterwards, before the Judge of Appeal.

According to the previous Law of 1853, provisory execution of judgments could only be granted up to 200 francs. Under the present law, this maximum has been reduced by Art. 2 to the fourth of the sum representing the object of the condemnation, said amount not to exceed 100 francs.

Previously appeal from this Tribunal had to be entered before the Commercial Court. This regulation caused much dissatisfaction, the workmen objecting that the Commercial Court being composed of employers could not decide impartially on disputes between employers and employees. Henceforth an appeal from the Trade Disputes Court will be heard by the Civil Court (Art. 3). The appeal will be tried and decided in the same manner as commercial matters, *i.e.* without requiring the assistance of a solicitor.

Paragraph 2 of Art. 3 provides that no appeal can be entered before the expiration of three days from the day of the judgment unless there is provisory execution or after ten days from the notification of the judgment.

The Civil Court must deliver its judgment within three months after the filing of the appeal.

Paragraph 1 of Art. 5 contains a very important clause; according to this new Law the Trade Disputes Court will come under the jurisdiction and the supervision of the "Ministre de la Justice."

Such are the changes in the law. Workmen are better protected, and proceedings in the first instance as well as before the Court of Appeal are rendered quicker and cheaper. It is quite proper that this Tribunal being a real tribunal should come under the jurisdiction of the "Ministre de la Justice."

(7) **Separation of the Church and State** (Law of December 9-11, 1905).—The question of the relations between the Church and the State is one of the most delicate and most complex within the province of the legislator. It affects the highest moral interests: it touches the public peace, as we have seen, when the Government comes to put the law in execution.

It does not come within the limits of this short review to appreciate the result of this Law. I will confine myself to a rapid examination of the principal articles thereof.

Chapter I. contains the principles, *i.e.* the rules relative to freedom of thought, to the free exercise of religion (Art. 1), to the separation of the Church from the State, and the prohibition of all expenditure for religious purposes in the budgets of the State, departments and communes (Art. 2).

Art. 1. The Republic guarantees the freedom of belief. It guarantees the right to profess a religion subject only to the restrictions exacted in the interest of public order.

Art. 2. The Republic does not recognise, contribute towards, or subsidise any religion. Consequently from January 1, following the promulgation of the present Law, all the expenses relative to the *exercice des Cultes* (religious devotions) will be omitted from the budgets of the State, departments or parishes (communes).

Religious institutions are abolished under clauses contained in Art. 3. This chapter contains only two articles: they state the principles which are the basis of the reform.

Chapter II. regulates the devolution of the property of the institutions which have been suppressed.

It also regulates the transfer of the property to the religious associations (*Associations cultuelles*) (Art. 4).

The same chapter provides for the property coming from the State and not encumbered with religious charges; for the minimum delay granted for the attribution of the property by the suppressed establishments (Art. 4); for the investment of the proceeds of the sale in inscribed stock. Precautions are taken by the Legislature for safeguarding the interests of the State, the departments and the communes (Art. 5); for the settlement of the suppressed ecclesiastical institutions (Art. 6); for the attribution of the property encumbered with charges charitable or foreign from the *exercice des Cultes* (Art. 7); for the rules to be followed when a public institution has not provided for the devolution of its property within the fixed time (Art. 8); for the conflicts which may arise between *Associations cultuelles* (Art. 8); for the case where no *Association cultuelle* is formed within the legal period (Art. 9); for fiscal immunities granted by the Legislature (Art. 10); for the pensions or allowances to the clergy ("Ministres du Culte").

Chapter III. regulates the question of religious buildings.

Chapter IV. provides for the constitution, regulation, and capacity of the religious associations; the constitution of the unions of these associations, their management, capacity, book-keeping, reserve funds, and the exemptions from taxes granted to religious buildings (Arts. 18-24).

Chapter V. defines religious offences and determines the penalties (Arts. 25-36).

Chapter VI. contains general provisions on the subject.

3. GERMANY (1904–5).

[*Contributed by* Ernest J. Schuster, Esq., LL.D.]

German legislation, as regards actual results, has been extremely barren during the two years mentioned above, but the legislative authorities have by no means been idle either during that time or during the year 1906. The preparations for a new Criminal Code and for a new Criminal Procedure Code have been, and are still, absorbing the interest of the Government departments whom they concern. A Bill for the codification of the law relating to private insurance has been, and still is, before the Reichstag; a Bill relating to the incorporation of trades unions was published during the last days of November, 1906, and, last but not least, a speech on the defects of the German system of judicature, and recommending the adoption of certain principles established in England, delivered in the Prussian Upper House by Dr. Adickes, the Chief Mayor of the city of Frankfort-on-the-Main, has stirred up the Government office as well as politicians and lawyers to a most remarkable extent. Among the statutes passed in 1904 and 1905, those referred to below are the only ones which are of general interest.

Compensation payable to Innocent Prisoners.—A statute passed in 1904 provides that a person who has been kept in confinement pending his trial for a criminal offence, and is liberated on the discontinuance of the prosecution or on his acquittal, is entitled to compensation for the pecuniary loss suffered by reason of such confinement, unless his arrest was brought about by certain specified circumstances due to his own default, or unless he has previously been convicted of any criminal offence and suffered one out of certain specified kinds of punishments. The several persons entitled to be maintained by the prisoner are also entitled to be compensated for the loss suffered by them. The Court when ordering the discontinuance of the prosecution, or when acquitting the prisoner, has to pronounce judgment on the claim for compensation. A subject of a foreign State is not entitled to the benefit of the statute, unless under the laws of such foreign State a German subject is entitled to corresponding rights.

Tribunals for Disputes between Mercantile Employers and Mercantile Employees.—One of the facts brought forward by the advocates of a reform of the German system of judicature is the increase of the demand for separate tribunals ousting the jurisdiction of the ordinary Courts as to the matters coming under their jurisdiction. The creation of separate tribunals for the trial of disputes between mercantile employees and their employers effected by a statute passed in 1904 is a result of that demand. The new tribunals are constructed on the model of the Trade Tribunals (*Gewerbegerichte*), by which disputes between industrial employers and workmen are tried under a statute passed in 1890 and amended in 1901. In all towns having more

than 20,000 inhabitants a Mercantile Traders' Tribunal (*Kaufmannsgericht*) must be established for the trial of disputes between mercantile traders and their employees or apprentices; in other districts the establishment of such tribunals is left to local option. Each tribunal is to have a professional chairman and vice-chairman and at least four lay assessors, composed, as to one-half of the number, of mercantile traders employing at least one clerk or apprentice, and as to the other, of mercantile employees. As a general rule a Court is formed by the chairman or vice-chairman sitting with two lay assessors. In disputes involving a subject-matter having a value exceeding 300 marks there is an appeal to the ordinary tribunals. In the same way as the Trade Tribunals act as Boards of Conciliation in relation to questions as to wages and conditions of employment in any branch of industry, the new tribunals are to act as Boards of Conciliation as to similar questions affecting mercantile employees or apprentices.

Restriction of Appeals to the Supreme Imperial Court.—The Supreme German Imperial Court at Leipzig is composed of one Chief President, ten Divisional Presidents, and eighty-one other judges. It has seven civil and four criminal divisions, and each appeal goes to a division composed of a President and six other judges, except in any case in which the appellant or the respondent desires the previous ruling of a particular division to be overruled, in which event the judges of all the civil or of all the criminal divisions, as the case may be, form one plenary Court for the trial of the appeal. Notwithstanding the large number of divisions and judges, the work of the Court is constantly in arrear owing to the large number of appeals, and various kinds of proposals have from time to time been made with a view of restricting appeals and of making the Supreme Court more efficient as the highest authority on important questions of principle. A statute passed in 1905 is intended to serve that object. Among the alterations which it introduces the following two are of special importance: (1) under the former law appeals to the Supreme Imperial Court were not allowed in any case in which the value of the subject-matter did not exceed 1,500 marks; by the new law the limit is raised to 2,500 marks; (2) under the former law an appeal of which notice had been given had to be heard unless withdrawn before the trial; under the new law the Court has before the trial to examine the case accompanying the notice of appeal, and if on such examination the Court is satisfied that an appeal on the grounds stated in such case is not admissible, or that the formal requirements have not been complied with, the appeal must be dismissed without hearing.

Alterations as to Criminal Jurisdiction.—There are three kinds of criminal Courts in Germany: (1) the most serious offences are tried by Courts composed of three judges sitting with a jury (*Schwurgerichte*); (2) less serious offences are tried by Courts composed of five professional judges sitting without a jury (*Strafkammern*); (3) the least serious offences are tried by Courts composed of one presiding professional judge and two

lay assessors (*Schöffengerichte*). The Courts of the last-mentioned kind have become very popular, and there is a general desire to extend their jurisdiction. This was done by a statute passed in 1905, which transfers the cognisance of certain classes of offences from the *Strafkammern* to the *Schöffengerichte* and also enlarges the class of offences which may by judicial order be referred to the last-mentioned Courts, as the last appeal from the *Strafkammern* goes to the Supreme Imperial Court, while the last appeal from the *Schöffengericht* goes to one of the Provincial Courts of Appeal (*Oberlandesgerichte*). A further relief of the Supreme Court is an incidental effect of the change.

Private International Law.—During the year 1904 The Hague Convention regulating conflicts of law: (1) as to the celebration of marriage; (2) as to divorce and judicial separation: and (3) as to the guardianship of infants, were ratified by the German Empire and a number of other States which had been represented at the Conferences on these subjects.

4. SWITZERLAND.

[*Contributed by* CARL WIELAND, ESQ., LL.D., *Professor Ordinarius of Law in the University of Basle.*]

Patents.—According to the law at present in force, only such inventions can be patented as can be represented by models. Under this rule many inventions, and especially chemicals produced by new methods, although they are protected by the patent laws of foreign countries, are not entitled to protection in Switzerland. An alteration in this respect has long been wanted, and for this a revision of Art. 64 of the Federal Constitution was necessary. By the Referendum of March 19, 1905, this alteration has been adopted and a new patent law is now being drafted.

The Issue of Bank-notes.—In the year 1891 the Confederation was granted the exclusive right to issue bank-notes and paper money, but it was not until 1905 that this monopoly of the Confederation was put in operation by the Federal law concerning the Swiss National Bank of October 6, 1905. According to this law the Swiss National Bank has alone the right to issue bank-notes. This Bank is a joint-stock bank under the control of the Confederation. It has its place of business and domicil in Berne, but the body of the Governors (*Directorium*) reside in Zurich. The joint-stock capital amounts to 50,000,000 francs divided into 100,000 registered shares. Two-fifths of these are allotted to the Swiss cantons.

The chief business of the Bank is the issue of bank-notes, but it also buys and discounts bills of exchange, grants loans against deposit, and similar business. The notes issued by the Bank are for 50, 100, 500, and 1,000 francs, and, by special permission of the Swiss Government (*Bundesrat*), for 20 francs. The amount of the bank-notes in circulation must

always be covered to the extent of 40 per cent. either by cash or gold in bullion or foreign gold coins, and the rest in bills of exchange. The Bank is obliged always to cash its notes to the full value. The constitution of the Bank is composed as follows: (1) The body of shareholders in general meeting assembled (*Generalversammlung der Actionnaires*); (2) the Bank Council (*Bankrat*), comprising forty members: of these the president, vice-president, and twenty-three are elected by the Federal Government (*Bundesrat*), the remaining fifteen by the shareholders; (3) the Bank Committee (*Bankauschuss*) of seven members elected by the Federal Government; (4) the Revision Committee (*Revisions-Commission*), consisting of three members elected by the shareholders; and (5) the body of the Governors (*Directorium*), comprising three members elected by the Federal Government. These Governors are the real managers.

Post Cheques.—By the Federal law of June 16, 1905, with respect to post cheques and endorsements (*Girosverkehr*), the post is to pay and transfer post cheques under special conditions to be made by the administrative authorities. A post cheque is a written order to the Post Office to pay bearer. The drawer of the cheque must have a balance in his favour at the Post Office. The bearer of the post cheque may either have (1) payment in cash, or (2), in case he has an account with the Post Office, may have the amount of the cheque transferred to his account, or (3) he may have a post cheque from the Post Office concerned payable at another Post Office. A branch of the business which was hitherto only transacted by banks is thus extended to the Post Office, much to the convenience of the public at large.

The Protection of Workmen.—A Federal law of April 1, 1905, supplements the Federal law of 1877 respecting working in factories. This law restricts the working day on Saturdays and also on the days preceding public holidays to nine hours. Work is not to be continued after five o'clock in the evening.

The Liability of Railways.—The liability of railways for death and injuries resulting from accidents is made more severe by the Federal law of March 28, 1905. The new law obliges the railway to pay damages whether there is negligence or not in case of all accidents occurring either in the building of the line or the working of it. The injured party in such a case may claim compensation, not only for actual loss and expenses, but for his bodily sufferings. The law hitherto in force allowed such a claim only on proof of malice or gross negligence. Claims under the new law cannot be transferred. Any contract by the railway company to pay the injured person an obviously inadequate compensation is liable to be set aside by the Court. The new law applies also to accidents occurring in the working of the Post Office system.

BRITISH EMPIRE.

UNITED KINGDOM.[1]

[*Contributed by* J. M. Lely, Esq.]

Acts passed—Public General, 23; Local and Personal, 213; Private, 8.

Of the twenty-three public Acts of Parliament which received the Royal Assent in the session which ended in August 1905, only three are of sufficient importance for detailed treatment—the Aliens Act, which came into operation on January 1, 1906; the Trade Marks Act, which came into operation on April 1, 1906; and the Unemployed Workmen Act, which is quite the most important Poor Relief Act since 1834, and has been in theoretical operation since its passing on August 11, 1905, though its practical working depended on the important Local Government Board orders and regulations issued on the following September 20 and October 10 to county councils and other bodies, and "to all others" whom those orders and regulations "might concern."

Subjoined is a short account of the various noteworthy Acts, the letters B.E., U.K., E., S., and I. designating application to the British Empire, the United Kingdom, England and Wales, Scotland, and Ireland respectively.

The Aliens Act.—The Aliens Act [U.K.], which defines "immigrant" as an "alien steerage passenger" intending to stay in this country, and "immigrant ship" as a ship having on board more than twenty such passengers "or such number of such passengers as may be for the time being fixed by the Secretary of State, either generally or as regards any special ships or ports," enacts that an immigrant shall not be landed from an immigrant ship except at a port where there is an immigrant officer, and not at such port without that officer's leave. This leave is to be withheld in the case of an "undesirable immigrant," the master or owner of the ship having a right of appeal against the refusal of leave from the immigration officer to an Immigration Board. An "undesirable immigrant" is one who (*a*) cannot show that he can decently support himself and his dependents (*sic*); or (*b*) is a lunatic or idiot or "owing to any disease or infirmity appears likely to become a

[1] This article is substantially a reprint of an article in *The Times* of Christmas Day, 1905.

charge upon the rates or otherwise a detriment to the public"; or (*c*) has been sentenced in a foreign country for an extradition crime; or (*d*) has had an expulsion order made against him. There is no definition of "dependents." Leave to land is not to be refused merely for want of means to an immigrant immigrating solely to avoid prosecution or punishment on religious or political grounds "or persecution involving danger of imprisonment or danger to life or limb on account of religious belief," or to an immigrant who, having taken his ticket here and embarked here for some other country after at least six months' residence here, has been refused admission to that country and returned here direct. Immigration boards will consist of three persons summoned in accordance with rules yet to be made out of a list for each port, and will comprise "fit persons having magisterial business or administrative experience."

As to expulsion of undesirable aliens, the Secretary of State may, if he thinks fit, make an expulsion order requiring an alien to leave the United Kingdom within a time fixed and thereafter to remain out of it upon a certificate either (*a*) of a conviction of serious crime with a recommendation by the Court of Trial that an expulsion order be made either besides or instead of the sentence, or the certificate of a Court of Summary Jurisdiction that the alien has received actual relief within twelve months, "or been found wandering without ostensible means of subsistence or been living under insanitary conditions due to overcrowding." The Act also, repealing and re-enacting with amendments the Registration of Aliens Act, 1836, requires masters of ships to furnish particulars of alien passengers, and empowers the Secretary of State to appoint "immigration officers" at such ports of the United Kingdom as he shall think necessary for the time being.

The Unemployed Workmen Act.—The Unemployed Workmen Act [U.K.] has directed the Local Government Board to establish a distress committee of every London Borough Council, consisting partly of councillors and partly of Poor Law guardians and persons experienced in the relief of distress, and a central body for the whole of London, consisting partly of members of distress committees and London County Councillors and partly of persons co-opted as additional members—one member at least, both of distress committee and central body, to be a woman. The distress committee are to make themselves acquainted with the conditions of labour within their area, and, when so required by the central body, to "receive, inquire into, and discriminate between any applications made to them from persons unemployed," but they are not to entertain an application from any person "unless they are satisfied that he has resided in London for such period, not less than twelve months, as the central body fix as a residential qualification." The expression "persons unemployed" throws the power of application far beyond the title of the Act, the requirement of a residential qualification only pointing further to wideness, and though Local Government Board regulations may frame, and have framed, "conditions under which

applications may be entertained," there is no express restriction of the Act to manual labour only, or to workmen in the ordinary sense of the term. The relief obtainable is that:

> If the distress committee are satisfied that any applicant is honestly desirous of obtaining work, but is temporarily unable to do so from exceptional causes over which he has no control, and consider that his case is capable of more suitable treatment under this Act than under the Poor Law, they may endeavour to find work for the applicant, or, if they think the case is one for treatment by the central body rather than by themselves, refer the case to the central body, but the distress committee shall have no power to provide, or contribute towards the provision of, work for any unemployed person.

The central body is directed to superintend the action and aid the efforts of the distress committee, and empowered to assist an unemployed person by emigration or removal to another area of himself and any of his dependants (*sic*) or by provision of temporary work. There is no definition of "dependants." The expenses are to be defrayed out of a central fund under the management of the central body, to be supplied by voluntary contributions and rates up to one halfpenny in the pound per annum, "or such higher rate, not exceeding one penny, as the Local Government Board approve." Provision of temporary work is not to work disfranchisement. Outside London, urban districts with a population of not less than 50,000 are to have similar distress committees. Local Government Board orders of September 20, 1905, have established such committees both for London and for such urban districts. Regulations may also be made generally for carrying the Act into effect, and particularly for, among many other things, authorising a central body to establish farm colonies, to acquire land by agreement, to accept gifts of money or property, to apportion receipts between a voluntary contribution account and a rate contribution account, and to borrow money, and copious regulations were issued by the Board on October 10, 1905, to the various bodies charged with their execution. These regulations enumerate the conditions—*e.g.* that an applicant has not from any sources sufficient means to maintain himself and his "dependants," (*sic*) and is of good character—under which an application may be entertained by a distress committee, provide that applications by persons having dependants, having been regularly employed, and being qualified for such work as is obtainable are to be treated preferentially, and require that any temporary work "shall have for its object a purpose of actual and substantial utility" and be subject to numerous other economical restrictions. The sixth of the twenty-two articles directs a distress committee to keep a record of every case in which they are applied to, and the detailed "Record Paper" which is scheduled to the regulations may be studied with advantage by all concerned. The Act is temporary only, and will expire at the end of three years from August 11, 1905. Many orders and circulars of the Local Government Board have been issued under it, and four such

circulars and three orders follow the edition of the Act in the continuation volume of *Chitty's Statutes of Practical Utility* for 1905.

The Trade Marks Act.—The Trade Marks Act [U.K.] of Mr. Moulton (now Lord Justice Moulton), Mr. Eve, Mr. Cripps, Mr. Butcher, Sir A. Rollit, Mr. Cawley, and Mr. Robson, is both a consolidating and amending measure, and greatly improves both the substance and the form of the law of its subject, which it has completely detached from the more general Patents, Designs, and Trade Marks Act of 1883. The short effect of the law before the Act was that the proprietor of a registrable trade mark might by registration of it at the Patent Office acquire the exclusive right to use it upon or in connection with the goods in respect of which it was registered. This right lasted for seven years, but registration might be renewed for seven years more from time to time. The registration had to be in respect of particular goods or classes of goods, and the proprietorship in the mark is assignable. Among the changes effected are these :—The sphere of "registrable trade marks" is much extended, to the benefit of British traders in their foreign trade. The grounds of official refusal to register will have to be stated in writing if the applicant so requires, and there will be an appeal against the refusal to the High Court of Justice or the Board of Trade, at the option of the applicant. Registration will become conclusive after seven years except in case of fraud or impropriety, and unauthorised assumption of the Royal Arms will be no longer penal, but only restrainable by injunction at the suit of any person authorised to use the arms.

Other Acts.—The Expiring Laws Continuance Act [U.K.] continues until the end of 1906 no fewer than ninety-one temporary Acts or parts of Acts, including an Irish Linen Act of 1835 [I.], the Ballot Act, 1872 [U.K], the Employers' Liability Act, 1880 [U.K.], the Corrupt Practices Acts [U.K.], and the Vaccination Act, 1898 [E.].

The Army (Annual) Act [B.E.] continues the Army Act for one year more—after the expiration of which it will have to be annually again, and again continued—and legalises a standing army of 221,300 men, exclusive of those serving in India.

The Agricultural Rates Act, 1896, Re-Continuance Act [E.] further continues the Act of 1896, which exempts agricultural land from rates, and which had been continued from 1901 to 1906, until March 31, 1910; and the Railway Fires Act [U.K.] (which, however, does not come into operation until 1908, and even then will apply only to claims not exceeding £100) gives compensation, hitherto irrecoverable on the ground that the engines were run with statutory authority, for damage to agricultural land or crops by sparks or cinders from railway engines.

The Coal Mines (Weighing of Minerals) Act [U.K.] empowers the persons employed in a coal mine and paid according to the weight of the mineral gotten by them to appoint a deputy check weigher to act in the absence of the present statutory check weigher for reasonable cause, and

increases the facilities to be afforded to a check weigher by requiring a shelter from the weather, a desk, and sufficient weight to test the weighing machines.

The Finance Act [U.K.] continues an income tax of 1*s.* in the pound, and various increased duties of Customs and Excise on tobacco, beer, and spirits, but reduces the tea duty from 8*d.* to 6*d.* in the pound. Exchequer bonds up to £10,000,000 are also authorised, with the novel feature of a redeemability by drawings.

The Provisional Order Marriages Act [E.] allows a Secretary of State, in the case of marriages which appear to him to be invalid or of doubtful validity, to remove the inability or doubt by provisional order to be confirmed by Parliament after advertisement of the draft order, official consideration of objections, and, if necessary, a local inquiry.

The Medical Act (1886) Amendment Act [B.E.] directs that for the purposes of the Act of 1886 (which allows Colonial practitioners to be registered in this country) where any part of a British possession is under both a central and local Legislature, an Order by the King in Council may declare that the part under the local Legislature is to be deemed a separate British possession.

The Shipowners' Negligence (Remedies) Act [U.K.] of Mr. H. Samuel, Mr. B. Jones, Major Evans-Gordon, Mr. Buxton, Mr. Fisher, Mr. Gray, Mr. Jacoby, Sir E. Flower, Mr. Marks, Sir A. Rollit, and Mr. Bell, was greatly altered in form during its passage through Parliament. The Act enlarges the remedies of persons injured by a ship in a port or harbour in the United Kingdom through the negligence of a foreign shipowner or any of his crew, by authorising a judge to order the detention of the ship upon it being shown that the owners are probably liable to pay damages. The detention is to continue until the owners have made satisfaction or given security to abide the event of an action. The Act is mainly intended to apply to the cases where workmen (and consequently their employers under the Workmen's Compensation Act) suffer from injuries received in discharging or loading the cargoes of foreign ships.

The Naval Works Act [B.E.] directs the Treasury to issue such sums up to £5,835,000 as the Admiralty may require for works at Dover, Gibraltar, Hongkong, Bermuda, and other places mentioned in the Act.

The Appropriation Act [U.K.], which deals with a grand total of £111,032,923 17*s.* 4*d.*, appropriates, under its more noticeable heads, £33,389,500 to the Navy, £29,813,000 to the Army, and £12,652,548 to "the salaries and expenses of the Board of Education and of the various establishments connected therewith."

The War Stores (Commission) Act [B.E.] provided for the more effective conduct, by Mr. Justice Farwell, Sir George Taubman Goldie, Field-Marshal Sir George White, Sir Francis Mowatt, and Mr. Samuel Hope Morley, of their investigation as Royal Commissioners directed to report upon the allegations of General Butler's committee, upon all the circumstances con-

nected with contracts in South Africa after peace, and upon the responsibility of all persons concerned. The Commissioners (who presented a Report early in 1906) had express power, analogous to that of previously passed Acts directing special inquiries by Royal Commissioners, to enforce the attendance of witnesses, compel the production of documents, and punish for contempt, a full indemnity being granted to every witness making a full and true disclosure touching all the matters in respect of which he is examined.

The Churches (Scotland) Act [S.] commits to five Royal Commissioners the settlement of the important questions as to property between the Free Church and the United Free Church in Scotland, which will be found fully set out in the judgments of the House of Lords in the case of *General Assembly of the Free Church of Scotland and others* v. *Lord Overtoun and others* (20 *The Times* Law Reports, 730), in which the majority of that House held, in August, 1904, reversing Scots decisions, that the union of 1900 between the Free Church and the United Presbyterian Church, under the name of the United Free Church of Scotland, was invalid and did not bind the property of the Free Church. The Commissioners (who are the Earl of Elgin, Lord Kinnear, Sir Thomas Gibson-Carmichael, Sir Ralph Anstruther, and Sir C. B. Logan), the quorum being three, and the chairman having a casting vote, are directed to allocate between the two Churches the property in question in such manner as appears to them fair and equitable, having regard to all the circumstances of the case, but subject to the provisions of the Act. It is also enacted that—

> The formula of subscription to the Confession of Faith of the Church of Scotland as by law established and from persons appointed to Chairs of Theology in the Scottish Universities and the principal of St. Mary's College, Saint Andrews, respectively, shall be such as may be prescribed by Act of the General Assembly of the said Church with the consent of the majority of the presbyteries thereof. The formula at present in use in any case shall be required until a formula in lieu thereof is so prescribed.

The Licensing (Ireland) Act [I.] prescribes entire instead of partial Christmas Day closing of premises licensed for the retail of intoxicating liquors in Ireland, with savings for sales to lodgers, *bonâ fide* travellers, members of registered clubs, and railway or packet-boat passengers.

2. THE CHANNEL ISLANDS: JERSEY.

[*Contributed by* T. Nicolle, Esq.]

Militia Law.—The Law passed in 1903 on the Jersey Militia, the provisions of which were given in the Review of Legislation of 1902 (vol. v. p. 333), was repealed in 1905. The new Law passed on October 10, 1905, and sanctioned by Order-in-Council dated December 11, 1905, has merely effected certain changes as to procedure, but in no way affects the main principles of the Law of 1903.

II. BRITISH INDIA.

[*Contributed by* Sir Courtenay Ilbert, K.C.S.I., C.I.E.]

1. ACTS OF GOVERNOR-GENERAL IN COUNCIL.

Acts passed—7.

A very slender volume suffices for the Acts passed by the Governor-General's Council in 1905. They include an Act (No. 3) to consolidate with some amendments the enactments relating to the Indian paper currency, and another (No. 4) to give the new Railway Board powers under the Indian Railways Act, but, with one exception, they are not of sufficient general interest to justify separate notice.

Local Government.—The Bengal and Assam Laws Act, 1905 (No. 7), which, though closely connected with a serious controversy, was itself of a formal and uncontroversial character, illustrates the procedure adopted in the creation of a new Indian province. The Act, after reciting the proclamations constituting the new province of Eastern Bengal and Assam, sets up a Board of Revenue, continues the existing laws, and provides machinery for their adaptation to the new circumstances.

2. MADRAS.

Acts passed—4.

Encroachments on Land.—For many years it was the practice in the Presidency of Madras to check encroachments on communal lands by the imposition of penal assessments, but a decision of the Madras High Court threw doubts on the legality of this practice, and the main object of the Madras Land Encroachment Act, 1905 (No. 3), was to remove these doubts. Its provisions appear to have been suggested to a large extent by the Bombay Revenue Code. It begins with a sweeping declaration, which gave rise to much learned debate on the nature and origin of proprietary rights in land, that "all public roads, streets, lanes and paths, the bridges, ditches, dykes and fences, on or beside the same, the bed of the sea, and of harbours and creeks below high-water mark, and of rivers, streams, vales, lakes and tanks, and all canals and watercourses, and all lands, wherever situated," are, subject to certain exceptions and to certain rights, the property of the Government. The Act then goes on to give power to punish unauthorised occupation of Government land by penal assessment, and, in the last resort, by summary eviction and forfeiture of crops and buildings.

The three other Madras Acts relate to excise, to the Madras Port Trust, and to the city police of Madras.

3. BOMBAY.

Acts passed—5.

Court of Wards.—The Bombay Court of Wards Act, 1905 (No. 1), establishes a Court of Wards for the Presidency of Bombay, having power to provide for the management of the estates of persons who by reason of age, sex, physical or mental infirmity, or "such habits as cause, or are likely to cause, injury to their property or to the well-being of their inferior holders," are disqualified to manage their own property. Courts of this kind have been established for most, if not all, of the other provinces of India, but had been considered unnecessary for Bombay, where the ryotwari tenure prevails, and small holdings are the rule. In the course of the debates on the Bill doubts were expressed as to the necessity for such a Court in the Bombay Presidency, and exception was taken to the non-judicial character of the Court. One of the main objects of the measure appears to have been the preservation of the estates of old families, an object which has influenced recent legislation in many other parts of India.

Encumbered Estates.—The Gujarát Táluqdárs' (Amendment) Act, 1905 (No. 2), amends one of the numerous Indian Encumbered Estates Acts applying to particular classes of landholders, in such a way as to bring it into conformity with the new Court of Wards Act.

Excise.—Act No. 3 extends the provisions of the Bombay Ákbárí or Excise Act of 1878 with respect to mhowra flowers, which are used for purposes of distillation, to certain districts which had previously been exempted from those provisions.

Statute Law Revision.—Act No. 4 is a repealing and amending Act of the kind usual in India for correcting and expurgating the Statute Book.

Municipal Government.—The City of Bombay Municipal (Amendment) Act, 1905 (No. 5), contains some important provisions for the prevention of overcrowding in what is now one of the most populous cities in the world.

4. BENGAL.

Acts passed—6.

Smoke Nuisance.—The Bengal Smoke Nuisances Act, 1905 (No. 3), is based on the recommendations of an expert who visited Calcutta in 1903. It provides for the appointment of Smoke Nuisance Commissioners and of inspectors, gives power to prohibit the erection of kilns and furnaces within specified areas, and imposes penalties for the emission of smoke from furnaces in greater density, at a lower altitude, or for a longer time than is permitted by rules made under the Act.

The five other Acts are of minor importance.

5. UNITED PROVINCES.

Acts passed—nil.

6. PUNJAB.

Acts passed—4.

Pre-emption of Land.—A law or custom of pre-emption in land is of long standing in the Punjab. It was based on a natural desire to keep strangers out of the village community, and to prevent interference with the privacy of the family in towns. The object of the Punjab Pre-emption Act, 1905 (No. 2), is to regulate this right of pre-emption in land, and it may be treated as supplementing the Land Alienation Act, a controversial measure to which reference has been made in previous numbers of this Journal. Whilst the chief object of the Alienation Act was to prevent agricultural land from passing permanently out of the hands of the old-established agricultural classes of the Punjab, the object of the Pre-emption Act is to afford facilities for preserving possession of such land where a member of an agricultural tribe desires to sell within his family or tribe, and to provide means for agricultural land reverting to an agricultural tribe when sold by a member of a non-agricultural tribe who may happen to have acquired it. The opportunity has been taken at the same time to simplify and make more precise the law of pre-emption in its relation to urban land.

Canals and Irrigation.—The object of the Punjab Minor Canals Act of 1905 (No. 3) is to provide adequate means for controlling and regulating the management of the smaller irrigation works of all kinds throughout the Punjab which are managed by district officers, or local boards, or which are owned and managed by private individuals. It is not intended to apply to any of the large perennial and inundation canals which are administered by the Irrigation Department of the province under an Act of 1873.

7. BURMA.

Acts passed—4.

Gambling.—Act No. 1 amends in some minor particulars the Burma Gambling Act of 1899.

Canals and Irrigation.—The Burma Canal Act, 1905 (No. 2), supplies a comprehensive code for regulating the construction and maintenance of canals and irrigation and drainage works, and includes provisions for obtaining a supply of labour from village headmen.

Fisheries.—The Burma Fisheries Act, 1905 (No. 3), is based to a large extent on the inquiries which have been recently made into the conditions of the delta fisheries in Burma, and which showed that the supply of fish in

the delta of the Irrawaddy was being gradually exhausted. Its object is to provide more effectually for the preservation and management of fisheries. The Act continues the two classes of public fisheries and leased fisheries which had been recognised by the previous Act (that of 1875), and creates, for the purposes of conservation, two new classses of fisheries—reserved fisheries and protected fisheries. The reserved fisheries are tracts of water which are demarcated as fisheries, but in which no fishing is permitted except for the purpose of destroying certain large fishes which prey on the edible species. The protected fisheries consist of sheets of water which in the rains spread over occupied lands in the low-lying parts of the delta. Large quantities of fish resort to these flooded lands, and many species spawn there, and unless some restrictions were placed on the mode of fishing the destruction of fish would be great. Accordingly in these fisheries permission is to be granted, without fees, to use such implements as may be used without injury to the supply of fish, but all other methods of fishing are to be prohibited. The Act provides for the appointment of fishery officers with the requisite powers.

Ports.—The Rangoon Port Act, 1905 (No. 4), supersedes an Act of 1879, and contains provisions of the kind usual in measures constituting bodies of Port Commissioners.

8. REGULATIONS UNDER 33 VICT. C. 3.

Regulations made—4.

The four Regulations made under the Act of 1870 do not call for any special notice. They amend on minor points the law relating to Ajmer municipalities, law and revenue in Assam, civil courts in Upper Burma, and courts in Coorg.

III. EASTERN COLONIES.

1. HONGKONG.

[*Contributed by* W. M. Graham-Harrison, Esq.]

Ordinances passed (between June 22 and December 8)—12.

Vagrancy Amendment (No. 2).—This Ordinance, in addition to making several small amendments in the Vagrancy Ordinance, 1897, substitutes a new section for s. 22 of that Ordinance; under the new section the master of a ship is liable for all charges in respect of a person brought by the ship into the Colony, who, within two months of his arrival, becomes a vagrant.

New Territories Land (No. 3).—This Ordinance provides for dealings with, and legal proceedings in connection with, the additional territories acquired by the Colony under the Convention of 1898 made with the Emperor of China.

S. 3 puts the execution of the Ordinance under the charge of the Land Registry Office, and s. 4 provides for the establishment of District Land Offices.

Under ss. 6-10 the Land Officer has power to decide in a summary way questions relating to land in the new territories, legal practitioners are not allowed as a general rule to appear before him, his judgments are conclusive, unless the capital value of the subject in dispute exceeds $2000, or unless the Supreme Court gives special leave to appeal, and the jurisdiction of the Supreme Court is excluded in disputes as to land below a certain value.

Under s. 16 the Land Officer has power to appoint and remove trustees for minors, and with his consent a trustee may deal with any property as if he were beneficial owner.

Sales (s. 22) and, in certain cases, mortgages (s. 23) must be made in the scheduled forms, and forms are also provided for Chinese customary mortgages (s. 24), transfers of mortgage (s. 25), leases (s. 26), and receipts by mortgagees (s. 32); under these forms of sale, mortgage, transfer of mortgage, and lease, certain covenants are implied (on the same lines as those in the Conveyancing Act, 1881), and the benefit of these covenants (s. 36) is annexed to the estate of the implied covenantee.

S. 24. The Crown is not bound by anything in the Ordinance.

Supplementary Appropriation (No. 4).

Merchant Shipping Amendment (No. 5).

Protection of Women and Girls Amendment (No. 6).—Ss. 2 and 3 raise the age for the purposes of s. 4 (1) (*a*) and s. 26 of the Protection of Women and Girls Ordinance, 1897, from sixteen to eighteen.

S. 4 provides for the admission of the evidence of a child of tender years unsworn, on the same conditions as are contained in the corresponding section of the Criminal Law Amendment Act, 1885, and the Prevention of Cruelty to Children Act, 1904.

Summary Offences Amendment (No. 7).—S. 3 makes females soliciting in public places or from windows, etc., overlooking public places, liable on summary conviction to a maximum fine of $50, or to imprisonment with or without hard labour up to one month; persons contravening the preceding provisions may be arrested without warrant.

Appropriation (No. 8).

New Territories Land Amendment (No. 9) amends the above Ordinance No. 3.

Married Women (Maintenance in Case of Desertion) (No. 10).—This Ordinance allows magistrates to grant separation orders to married women who have been deserted, persistently ill-treated, or wilfully neglected by

their husbands. The provisions of the Ordinance follow generally the provisions of the corresponding Imperial Summary Jurisdiction (Married Women) Act, 1895.

Railways Loan (No. 11).—This Ordinance gives power to raise £2,000,000 for certain railway purposes.

General Loan and Inscribed Stock (Amendment) (No. 12).—This Ordinance amends the General Loan and Inscribed Stock Ordinance, 1893, by allowing money to be raised under that Ordinance, either by debentures or partly by debentures and partly by inscribed stock.

2. STRAITS SETTLEMENTS.

[*Contributed by* T. Baty, Esq., D.C.L.]

Acts passed—24.

Railways and Pilots (Ords. 4 and 8).—These consolidate and amend the law relating to railways and pilots respectively. The latter enactment completely recasts the old statute dealing with pilots (8 of 1879). It severs the pilot boards of Singapore and Penang, and it not only gives the separate boards power to make rules for pilotage, but to "control and supervise" all pilots—wide words, which cannot mean exactly what they appear to do. "Second-class licences"—for pilotage of limited tonnage—are abolished, and a vision test is required, repeated at frequent intervals. The money penalty for fraudulent use of a pilotage licence or pilot signals is increased from $100 to $500. The exemption of king's ships, and ships and steamers of less than 100 and 50 tons respectively, is repealed. Pilots absent or evading employment without leave for over a month lose their licences *ipso facto.*

Medicine (Ords. 9 and 15).—The medical profession is the subject of two Acts. No. 9 establishes a Medical Council (three official and two private practitioners, the latter nominated by the local branch of the Brit. Med. Ass.), and a register. None but registered persons will be "legally" or "duly" qualified practitioners and entitled to sue for their fees, or for the price of medicine prescribed and supplied within the Colony or the Federated Malay States or Johore. It seems curious that the extension to the Federation and Johore is introduced in the latter case only. For that it is an extension, and not a limit set to a general refusal to allow foreign doctors to sue, wherever their fees have been earned, unless they register in the Colony, is almost beyond argument. Government officers, army and navy officers, and ships' surgeons are exempted, but practice by other unregistered persons is penalised. The Act, however, is not to interfere with the practice of Asiatic methods by any one. For a list of registrable

qualifications the reader is referred to this Journal (vol. vi. p. 342): persons not having them, but already in practice in the Colony, may (1) have their qualification specially recognised by the Council, or (2) be examined by them. Ordinance 15 establishes a school of medicine under a different council (only one unofficial doctor being a member of the board of eight), with power to grant the diploma of licentiate in medicine and surgery—the majority of the examiners to be external. Such a diploma qualifies for practice.

Charities.—Ordinance 17 deals with Mahommedan and Hindu charitable endowments. "Hindu," with wide tolerance, includes any religion professed by natives of India except Christianity, Buddhism, and Mahommedanism. A Charity Commission of three is authorised for each settlement, and whenever such a board reports to the Governor that it would be to the advantage of an endowment that the board should administer it, the Governor may make an order vesting all the charity property in the board, and enabling it to administer it. Dismissed employés may appeal to the Court from their dismissal by the board. The board may require accounts and answers on oath to inquiries from all persons concerned under a penalty of $50 per diem. The English provisions as to litigation by charities are adopted, and the boards have power to sanction improvements outside the terms of the trust. Lastly, the boards have power to remodel charities by "schemes," but these must be approved by the Supreme Court.

Fisheries (Ord. 21).—A useful short clause in this Act prohibits the use of explosives in fishing "within the waters of the Colony" (even in private ponds and streams?), under a fine of $200 or two months' imprisonment. A further clause empowers the Governor to prescribe what methods of catching fish may or may not be used—a measure of much more questionable policy. In case such a rule is contravened, the fine is $100 and $10 per diem, and all nets and other appliances used in contravention of the Ordinance may be forfeited *and* destroyed.

Poisons (Ord. 10).—S. 35 of 13 of 1872 only regulated retail dealings with arsenious poisons and nux vomica. The present Act schedules many more substances and allows the Governor to proclaim others. The medical officers are substituted for police officers as licensing authorities, and their licence is needed for the sale of poison even by "recognised" apothecaries, who were not affected by the old Act. The mere possession of poison in small quantities is no longer unlawful (unless under particular statutes), and the provisions as to sale to unknown persons or minors, or by dealers in food, are repealed entirely.

The money penalty is increased from $500 to the sum of $2,500, and the imprisonment from three months to twelve. And, as usual, the Governor in Council is given power to make such rules as may "seem expedient" for regulating the possession and sale of poisons.

Currency (Ord. 3).—The Currency Note Ordinance, 1899 (No. 4), appears

in want of frequent repairs. Amended in 1903 and again in 1904, it is the subject of a fresh amendment in 1905. The amendment provides that the profit on minting silver bought with the proceeds of certain part of the Note Guarantee Fund shall not form part of that fund.

Miscellaneous.—The *Tanjong Pagar Dock* Ordinance (No. 7) is notable as constituting an arbitral tribunal to decide questions of compensation arising out of the transfer of the dock to the Government—the Lord Chief Justice of England to have power to appoint an umpire if the arbitrators failed to agree on one. *Autocars* are dealt with in Ordinance 13, amending the Locomotives Ordinance, 1871 (No. 8). The regulations contained in the old Act are repealed, and the legislature leaves it to the Governor in Council to promulgate rules on the subject. There is an interesting tenure of land in the old Dutch colony of *Malacca*, which has been recognised by statute (9 of 1886): failure to discharge the feudal obligations involved in it entails penal liabilities, which are somewhat modified by Ordinance 23 of 1905.

3. FEDERATED MALAY STATES.

[*Contributed by* T. Baty, Esq., D.C.L.]

(i) PERAK.

17 Enactments.

Few of this year's statutes are of any great importance. The law of *telegraphs* (formerly regulated by Sultanic Order 25 of 1895) is replaced by a new code (No. 6), and the same fate has befallen the *Police Force* Code of 1903 (see this Journal, vol. vi. p. 345), now replaced by No. 7 of 1905, the *Post Office* Code of 1895, replaced by No. 11 of 1905, the *Auctioneers'* Order in Council of 1891, replaced by No. 9 of 1905, and the *Courts* Enactment, 1900, replaced by No. 13 of 1905. Enactment 5 establishes an *official administrator* on the lines familiar in Indian jurisprudence, and enactments 8 and 14 amend the *Criminal Procedure* Code (19 of 1902) in points of detail. Enactment 15 amends in slight details the *Civil Procedure* Code (11 of 1902). *Irrigation* is dealt with by No 16, authorising the imposition of a water-rate in irrigation areas, in the Krian districts; and incidentally making adjoining owners absolutely responsible for damage done to waterworks by *accidental* fires arising on their property. Act No. 12 empowers troops in the course of manœuvres to cross, encamp, and construct temporary works on any land; the commander of the forces paying compensation. If over five hundred troops are engaged, or the period extends over forty-eight hours, a month's notice is to be given to the Resident, and posted up by him in the neighbourhood.

Dwelling-houses (but not their grounds, except those within the curtilage—

an expression which it is to be hoped is understood in Malaya), places of worship, schools, factories, and business premises are not to be entered. Any area may be taken permanently as a firing-ground or manœuvring ground, and then buildings may be removed.

(ii) SELANGOR

closely followed the Perak legislation. The *Irrigation* Act was not required, as it only applied to a particular district of Perak, and the *Straits Penal Code* was adopted with its amendments and *future* amendments. This adoption *en bloc* of the penal legislation of a place which is, after all, supposed to be politically foreign, must be productive of extraordinary consequences. The Selangor enactment does not even say "*mutatis mutandis*." As was pointed out in dealing with the Perak legislation of 1903 (J.C.L. VI. 345), the law of treason is incapable of exportation: and there must be many other cases in which it will be impossible to say whether it is the Straits law as such, or a set of similar rules looking only to occurrences in Selangor, that is to be applied. Probably the latter is what is meant. Thus, when the Straits law makes it an offence to destroy Government property, it will not be Straits Government property that should be understood in Selangor, but Selangor Government property. This is not, however, what the Act says, for it simply makes the Straits code "of the same effect in the same manner as if it had been expressly enacted" by the Sultan. If those words were to be taken literally, s. 2 of the Straits code would stultify itself—because it enacts that no person shall be liable under the code, except for acts done in the Colony. *Ex hypothesi*, these could not be done in Selangor.

(ii) NEGRI SEMBILAN

accepted the same legislation. It is hardly necessary to keep up the transparent fiction that the Federated States legislate independently, when they are all found adopting legislation of precisely the same pattern.

(iv) PAHANG

passed a *Vaccination* Act, and did not adopt a penal code, but otherwise its legislation was substantially the same.

4. MAURITIUS.

The summary of Legislation will appear in 1907.

IV. AUSTRALASIA.

1. COMMONWEALTH OF AUSTRALIA.

[*Contributed by* HERMAN COHEN, ESQ.]

Acts passed—Public, 26.
Omitting Appropriation and Supply Act.

No. 2 is a **Jury Exemption Act.** Only public functionaries are exempt (in Commonwealth or State): the non-exemption of professional men is conspicuous.

Evidence Act (No. 4).—This deals with the formal proof of documents, proceedings, etc., very much on English lines.

Service and Execution of Process Act (No. 5) provides for the issue of "provisional warrants" of arrest in the absence of the original warrant, which must, however, be produced within a reasonable time.

Wireless Telegraphy.—No. 8 is a code to secure the Postmaster-General's monopoly. It does not apply to the King's Navy.

The Papua Act.—No. 9 is "to provide for the acceptance of British New Guinea as a territory under the authority of the Commonwealth, and for the Government thereof." It seems that this measure was necessitated by an event which is the first of its kind in the history of the Commonwealth—the facts leading up to which are recited in a long preamble—and that there is no British precedent for such a statute. The constitutional arrangements have a resemblance to those existing in our West African possessions. At present the white resident population appears to be less than two thousand; only they have the franchise. There are severe penalties for supplying natives with intoxicants except for medical purposes. No freeholds are to be granted on the land.

Secret Commissions Act (No. 10) contains very drastic provisions against dishonest agents. The penalty is £1,000 when the principal is a corporation, and £500, or two years' imprisonment, or both, in the case of any other "person." A conviction is to be no bar to c vil proceedings for the recovery of the amount of the secret gift from the agent or its equivalent from the giver.

The Representation Act (No. 11) provides that the Chief Electoral Officer of the Commonwealth shall determine the numbers of the population of each State and of the Commonwealth practically according to a decennial census in each State (see No. 15), with a quinquennial revision, and upon the basis of those numbers the number of members of the House of Representatives in each State.

The Life Assurance Companies Act (No. 12) is evidently aimed at the same evils connected with the assurance of infant life as have arisen in this country. The highest amount payable is that upon death between nine and ten years—viz. £45.

No. 15 is a **Census and Statistics Act.** The Census is to be taken decennially after 1911. The particulars to be returned include the religion and education of every person, "sickness or infirmity," "the material of the dwelling, and the number of rooms" therein, and are decidedly inquisitorial. The "Statistician" is the chief Census officer, and is bound to collect annually a great mass of economic statistics.

Commerce (Trade Descriptions) Act (No. 16).—This is the Australasian Merchandise Marks Act.

Immigration Restriction Amendment Act (No. 17).—The principal Act (1901) gives effect to the well-known policy of the Commonwealth in this behalf. The resultant Act, *as amended*, is conveniently set out in the Appendix. See *Journal of Comparative Legislation*, XV. p. 104.

No. 18 provides for a contribution of £25,000 towards a Memorial to Her late Majesty.

Contract Immigrants Act (No. 19).—The keynote is in s. 4, which runs: "Every contract immigrant, unless otherwise prohibited by law, may land in the Commonwealth if the contract is in writing and is made by or on behalf of some person named in the contract and resident in Australia, and its terms are approved by the Minister" (for External Affairs). Its effect on the Immigration Restriction Act (see No. 17 above) is set out in the amended form of that Act printed in the Appendix.

No. 20 is a Trade Marks code in which English Statutes have been freely used, as is acknowledged in many references in the margin.

No. 23 provides for a bounty to growers of sugar-cane and beet.

The Copyright Act (No. 25) is singularly well drawn and complete. The draftsman has profited by the mass of British case-law on the subject. The protection of International Copyright in the Commonwealth purports to be secured by two sections in Part VI., but on this most difficult of all legal topics only a specialist lawyer could say whether the statute is adequate.

The Commonwealth Electoral Act (No. 26) is the last of the series. It, too, is set out in its final amended form in the Appendix. The details are more or less those of our Ballot and Corrupt Practices Acts, but an English reader is struck by the possibility of "voting by post" and the legislation for elections to the Senate.

2. NEW SOUTH WALES.

The summary of Legislation will appear in 1907.

3. QUEENSLAND.

[*Contributed by* W. F. CRAIES, ESQ.]

Acts passed—33.

Finance.—5 Ed. VII. Nos. 2, 4, and 22 are Appropriation Acts.

Governor's Salary.—5 Ed. VII. No. 3 reduces the salary of the Governor as from the then next appointment to £3,000 a year,[1] and the salary of the Governor's private secretary from £400 to £300 per annum.

Parliamentary Elections.—5 Ed. VII. No. 1 amends the Elections Acts, 1885 to 1898,[2] which are already printed and treated as a Consolidated Act. The amendments made are effected by repeal and substitution on the plan adopted in amending the Imperial Army Act of 1881.

The principal changes in the law consist in the grant of the suffrage to all persons not under twenty-one years of age, whether male or female, whether married or unmarried, provided that they—

(1) have resided for twelve months continuously in the State;

(2) are natural-born or naturalised subjects of the King—*i.e.* naturalised in the United Kingdom or within the meaning of the Commonwealth Naturalisation Act of 1903;

(3) are entered on the electoral roll for an electoral district of the State.

The rule as to elections is one adult one vote (s. 9 [3]), but provision is made for allowing an elector to vote in a district in which he holds freeholds or leaseholds of a certain value instead of in the district in which he resides.

There are numerous disqualifications, such as lunacy, habitual drunkenness, and many crimes and offences. Aboriginal natives of Australia, Asia, Africa, and the Pacific Islands may not be placed on an electoral roll[3] (s. 9 [1]).

Bills of Exchange.—5 Ed. VII. No. 7 amends ss. 61 and 83 of the Bills of Exchange Act, 1884.[4]

S. 2 protects bankers who in good faith and without negligence pay a bill or note payable at their bank which has been so drawn, accepted, or made by a customer as to afford facility for fraudulent alteration in the amount,

[1] Under the Constitution Act of 1867 the salary was £4,000; under the Amending Act of 1874 (38 Vict. No. 16) it was raised to £5,000.

[2] Journal, N.S. vol. i. p. 479.

[3] The expression "aboriginal native" is well established as to the black aboriginals of Australia; but it will be somewhat difficult to apply it to Christians from Smyrna or Egypt, and to inhabitants of Japan, China, or India.

[4] 48 Vict. No. 10; a transcript of the Imperial Act of 1882.

and has been fraudulently altered. The section extends to orders or demands by one branch on another in Australasia.[1]

S. 3 protects bankers who in good faith and without negligence receive payment for a customer of a bill or note to which he has no title.[2] In the case of a cheque the bank is protected even when it has credited the proceeds before collection.[3]

Harbour Dues.—5 Ed. VII. No. 32 repeals the provisions of a series of prior statutes authorising the levy of differential harbour dues in favour of goods from other Queensland ports.

Infant Life Protection.—5 Ed. VII. No. 19 is intended to make better provisions for the protection of infant life. It is avowedly based on the model of similar legislation in Victoria (Act No. 1198) and South Australia (Act No. 702).

Infants under three may not for reward be received or adopted unless the place of receipt or adoption is registered as a nursing home (s. 6). This does not apply to the case of relatives or guardians or to orphanages (s. 5). Nursing homes are registered and inspected. Adoption of a child under three must be registered (s. 15). Provision is made requiring notice by the occupier of a house where an illegitimate child is born to the registrar of births of the fact of birth, and a like duty as to notifying death is imposed in the case of illegitimate children under five (s. 17). The remedies of the mother against the father of a bastard are extended so as to include confinement expenses (s. 16).

Criminals.—5 Ed. VII. No. 24 is intended to prevent the influx of criminals and to prevent certain criminals from remaining in or returning to the State. It is in substance a transcript of the New South Wales Act of 1903.

Firearms.—5 Ed. VII. No. 29 imposes penalty on the sale to or use by persons under fourteen of any firearm. The Act operates only in districts fixed by gazetted notification of the Governor in Council.

Hawkers and Pedlars.—5 Ed. VII. No. 5 amends the existing legislation of the Colony[4] as to hawkers and pedlars by requiring police magistrates or justices in petty sessions to refer to the Home Secretary applications made to them for licences with a report and recommendation, in cases where they are in favour of the grant of a licence.

Census.—5 Ed. VII. No. 6 authorises the omission of the taking in 1906 of the census, which would otherwise have been taken under the Quinquennial Census Act of 1875 (39 Vict. No. 2).

[1] Passed in consequence of the decision of the High Court of Australia in *Colonial Bank of Australasia* v. *Marshall*, affirmed (1906); A.C. 559, and see *Scholefield* v. *Lord Londesborough* (1896), A.C. 514.

[2] Passed in consequence of *Gordon* v. *London City and Midland Bank* (1903), A.C. 240.

[3] See *Akrokerri (Atlantic) Mines Ltd.* v. *Economic Bank* (1904), 2 K.B. 465.

[4] That law is contained in two Acts of 1849 N.S.W. (13 Vict. No. 36) and 1869 (33 Vict. No. 11).

Legal Profession.—5 Ed. VII. No. 10 permits women to become barristers, solicitors, and conveyancers in like manner and subject to the same conditions as men, and on admission with the same rights and privileges and the same obligations as men, and allows women to be articled to solicitors.

Smoking by the Young.—5 Ed. VII. No. 12 prohibits the sale, gift, or supply of tobacco to a person under sixteen, and the use of tobacco in any form in any public place or conveyance by a person under sixteen. In the case of the latter offence the offender's term of imprisonment may not exceed twenty-four hours.

Railways.—5 Ed. VII. No. 13 creates a board for hearing appeals from the Railway Commissioners by employees on State railways. The board is to consist of five members—three chief officers of the State railways and a police magistrate and an employee of the State railways elected by ballot of the other employees and approved by the Governor in Council.

Agricultural Holdings.—5 Ed. VII. No. 11 provides for the compensation of tenants of agricultural holdings for improvements made by them during their tenancy. The Act is framed by reference to the English Agricultural Holdings Acts of 1893 and 1900, but includes provisions adapted from the South Australia Act No. 521. The holdings to which the Act applies must be of at least five acres and include land suitable for dairying and for orchards or plantations of bananas, pineapples, or sugar-cane.

Agricultural Selections.—5 Ed. VII. No. 20 is intended to provide means for assisting settlement upon agricultural lands in Queensland, by authorising the Secretary for Agriculture to give as a loan in money or kind help to members of bodies of selectors of agricultural homesteads under the Special Agricultural Selections Act of 1901.[1] The aid is limited to rent and necessaries for a limited period, tools, stock, and cost of preparing the land and of receiving instruction in farming and dairying.

Agricultural Lands Purchase.—No. 21 provides for the purchase for agricultural settlement of certain lands in the Burnett District of the State.

Marsupials and Dingoes.—5 Ed. VII. No. 8 reproduces in a permanent form the substance of prior and temporary legislation[2] for the destruction of marsupials, dingoes and other wild dogs. The State may be divided into districts or special districts, each having a Marsupial Board of five, one appointed by the Governor in Council, the others elected from and by resident owners of holdings on which a prescribed amount of cattle or sheep has been returned to exist. The Board grants the necessary permits to scalpers of the animals to be destroyed and for payment for the scalps, and levies assessments on owners of cattle and sheep to defray the expenses of scalping.

Rabbits.—5 Ed. VII. No. 25 amends the Rabbit Board Act, 1896,[3] in

[1] 1 Ed. VII. No. 23.

[2] See Journal, O.S. vol. i. p. 51; N.S. vol. i. p. 105.

[3] Journal, O.S. vol. ii. 1897, p. 177.

details as to the qualification of electors, the assessments for expenses, and the duties of owners with reference to fencing against rabbits, and to their destruction.

Agricultural Bank.—5 Ed. VII. No. 15 amends the Agricultural Bank Act, 1901[1] and 1904,[2] and particularly—

(1) by forbidding advances to aliens (s. 2);

(2) by providing for new leases of grazing farms or grazing homesteads for a term sufficient to secure repayment of advances made (s. 4).

Brands.—5 Ed. VII. No. 17 amends the Brands Act, 1898, by making the fact that a registered device or symbol is duly branded on cattle *primâ facie* evidence that they belong to the registered owner of the device or symbol.

Fertilisers.—5 Ed. VII. No. 16 regulates the sale of fertilisers, and makes provision for their analysis by public authority, and prescribes the proportions of nitrogen, phosphoric acid, or potash necessary to make sale lawful. Dealers in fertilisers are obliged to give notice to the Minister of Agriculture of the brands in which they deal and to certify the ingredients, and to give to buyers an invoice certificate as to the ingredients, which shall be deemed a representation or warranty by seller to buyer of the truth of the matters stated therein (s. 6).

Dairy Produce.—5 Ed. VII. No. 33 amends the Dairy Produce Act of 1904,[3] by authorising the establishment of a minimum standard of butter-fat in cream, and prohibiting the sale of cream below the standard or the purchase of such cream by a butter factory.

Lands.—5 Ed. VII. No. 28, an Act of forty-four sections, amends the Land Act, 1897, and the Agricultural Lands Purchase Acts, 1894 to 1901.[4]

It restricts the rights of aliens to acquire land by requiring as a condition precedent ability to read and to write from dictation words in a language prescribed by the Minister of Lands, and by forfeiting interests in land acquired by aliens if they do not within three years become naturalised (s. 3).

It also provides for setting apart lands for selection in the United Kingdom by applicants there, and for facilitating the voyage to Queensland of selectors taking up such lands (s. 8).

Provisions are made for postponing and reducing payment of rent and purchase instalments, doubtless due to the effect of the years of drought.

The remaining details are of mainly local concern, and to set them forth would involve reference to the whole land system of Queensland.

Local Rates.—5 Ed. VII. No. 31 validates certain sales of land by

[1] Journal, N.S. vol. iv. p. 268.
[2] Journal, N.S. vol. vii. p. 116.
[3] Journal, N.S. vol. vii. p. 115.
[4] See Journal, N.S. vol. iv. p. 270.

local authorities for unpaid rates, with a saving as to proceedings pending or completed.[1]

Shearers and Sugar-workers.—7 Ed. VII. No. 9 requires the employers of shearers and sugar-workers to provide accommodation proper and sufficient for their comfort and health. The nature of the accommodation is prescribed and the employees are put under obligations as to keeping their quarters clean, etc. Provision is made for inspection and for making the employers comply with their obligations.

Workers' Compensation.—5 Ed. VII. No. 26 amends the law with respect to compensation to workers for accidental injuries suffered in the course of their employment (s. 3).

The Act applies only to employment by an employer on, in, or about—

(1) any industrial, commercial, manufacturing, or building work carried on by or on behalf of the employer as part of his trade or business; or

(2) any agricultural, horticultural, or pastoral work carried on by or on behalf of the employer as part of his trade or business; or

(3) any mining, quarrying, engineering, or hazardous work carried on by or on behalf of the employer as part of his trade or business or *as an investment with a view to profit*; or

(4) any work carried on by or on behalf of the Government of Queensland, or by any local authority as the employer, if the work would in the case of a private employer be an employment to which this Act applies.

The definition of "worker" includes "employments on ships or vessels in any waters within Queensland or the jurisdiction thereof" (s. 2).

Compensation is not payable for accidents occurring on the way to or from work, or directly attributable to serious and wilful misconduct of the worker, or unless the accident disables the worker for at least two weeks from earning full wages at the work on which he was employed (s. 4). The scale of compensation is determined by the schedule, with a maximum of £400. The amount is determined by a police magistrate, subject to appeal on points of law. The provisions of the Act do not supersede the rights of the injured person at common law, or under the Employers' Liability or Factory Acts of the State (s. 6); and provision is made as to cases where the injury was caused by a stranger (s. 8), and as to sub-contractors and for the case of the insolvency of the employer (s. 11). Deductions from wages in respect of employers' liability are forbidden (s. 14), but the Governor in Council may sanction schemes of compensation in substitution for the provisions of the Act (s. 12).

[1] This Act was passed in consequence of a decision of the Supreme Court *In re Church's Caveat*, 1902, Queensland State Reports 201, that publication of the notification required by the Act of 1902 was a condition precedent to the validity of a sale for arrears of rates.

Tramways (Local).—5 Ed. VII. No. 14 amends a local Act of 1900 as to the Albert River, etc., Tramway.

Brisbane Traffic Regulation.—5 Ed. VII. No. 18 repeals Acts of 1895 and 1896 as to traffic in and near Brisbane and abolishes the Metropolitan Transit Commissioners appointed under these Acts. The control of traffic is for the future to be in the hands of the Commissioner of Police. Much of the Act is a transcript of the portions of the Local Government Act, 1902,[1] which relate to traffic. Power is given to make regulations under forty headings for licensing motor-men, limiting the number of licensed passenger vehicles, and prohibiting or regulating the setting-up of coffee-stalls in roads or the itinerant vending of goods, or the use of musical instruments on any road.

Brisbane Water Supply.—5 Ed. VII. No. 23 empowers the Water Board to define by by-laws the basis for assessment for water rates. Six alternatives bases are proposed. Different bases may be adopted for different lands and the Board may make up a standard out of any two or more of the six or may apparently form any other basis they choose. They may fix a minimum charge, may supply water at a lower rate in excess of specified quantity, or by agreement, and may charge for water supplied to lands not ratable, and give discount for prompt payment of rates.

Brisbane Fish Market.—5 Ed. VII. No. 30 provides for the establishment, maintenance, and regulation of a fish market for Brisbane and the surrounding districts, and the creation of a Board for its management. No fish may be sold which has not yet been inspected and passed through the market (s. 11). Power is given to fix by by-laws fees for inspection and market dues (s. 15).

Cairns Harbour.—5 Ed. VII. No. 27 defines the limits of Cairns Harbour and creates a Harbour Board and regulates the harbour dues to be paid.

4. TASMANIA.

[*Contributed by* W. M. Graham-Harrison, Esq.]

Acts passed—public 36, private 14.

Legitimation (No. 3).—Tasmania in this Act follows the example of the other Australian Colonies, and allows illegitimate children to be legitimated *per subsequens matrimonium*. The operation of the Act is retrospective; illegitimate children are to be deemed legitimated as from birth and for the purpose of succession to real, as well as to personal, property.

Land Tax Consolidation (No. 4).—This Act consolidates the law as to Land Tax.

Women and Children Employment (No. 5).—By this Act the employment in a factory of any person under the age of thirteen years is prohibited.

[1] 2 Ed. VII. No. 19.

Bills of Exchange Amendment (No. 7).—S. 2 provides that branch banks are to be deemed separate institutions for certain purposes and s. 3 enacts the same provision as to crossed cheques as is contained in the recent English Act.

Bodies Corporate (Joint Tenancy) (No. 8).—This Act reproduces the provisions of 62 & 63 Vict. c. 20, s. 1.

Public Service (No. 9).—The Public Service of Tasmania for the purpose of this Act comprises all persons employed in the public service of Tasmania, with certain specified exceptions, of which the most important are the Judges of the Supreme Court.

The Act is divided into four parts. Part I. deals with administration and provides for the appointment, constitution, powers, etc., of a Public Service Board ; under s. 14 the Board are to inspect all Government departments and provision is made for securing that no Department has any excess of officers.

Part II. deals with the divisions of the Public Service into professional, clerical, and general divisions. Under s. 25 only British subjects and persons who have passed the requisite examination are, as a general rule, eligible for appointment to the Service.

Ss. 35-39 regulate the relations between the Public Service of the Commonwealth and the Public Service of the State of Tasmania.

Part III. provides for internal administration and Part IV. contains miscellaneous provisions (*e.g.* as to forfeiture of office, leave of absence and holidays, prohibition of performance of work outside Public Service).

Supplementary Appropriation (No. 15).—This Act provides for the issue out of the Consolidated Revenue Fund of the sum of £991,152 for the service of the six months ending June 30, 1904.

Appropratiion (No. 17).—This Act provides for the issue out of the Consolidated Revenue Fund for the service of the year ending June 30, 1906, of the sum of £333,384 13*s.* 1*d.*

Homing Pigeons (No. 21).—This Act prohibits the destruction of homing pigeons under a penalty of £10, which is in addition to the liability to pay full damages.

Mining (No. 23).—This Act consolidates the law as to mining fields and mining operations.

Cremation (No. 27).—This Act makes cremation unlawful in certain cases and allows the Governor to make regulations as to cremation.

Second-hand Dealers (No. 28).—Under this Act all second-hand dealers are required to take out licences. Ss. 8 and 9 reproduce the provisions of ss. 5 and 6 of 3 Ed. VII. c. 44.

Police (No. 30).—This Act consolidates and amends the law relating to police government.

Foreign Companies (No. 35).—This Act removes, so far as regards a Trustees' and Executors' Company legally incorporated in some other part of His Majesty's dominions, the disability of a foreign company to hold land in Tasmania.

Game Protection (No. 38).—This Act enables the Governor to declare a close time for kangaroo, deer, and opossum hunting.

Youthful Offenders (No. 39).—This Act requires charges against children (*i.e.* boys under sixteen, and girls under eighteen) to be tried, when the trial is in a city or any other place proclaimed by the Governor, in some place other than the ordinary Court-room, and all persons not directly concerned in the case must be excluded from the place of hearing. Where the trial is not in a city, etc., a charge against a child will be heard in the ordinary Court-room, but must not be held at the hour when the ordinary business of the Court is being transacted.

5. VICTORIA.

[*Contributed by* C. J. Zichy-Woinarski *and* W. Harrison Moore, Esqs.]

Acts passed—53.

Public Health.—This is the subject of a number of important Acts.

Pure Food (No. 2010).—This Act enlarges the scope of the Health Acts in relation to the prevention of the adulteration of food and drugs, and alike in the extension of the powers of officers and the machinery of the Act generally the law on this subject is gradually assuming in rigour the character with which we have been long acquainted in the administration of the Customs and Excise laws. An "article of food" is declared to include every article used for food or drink by man, and any article that enters into or is used in the composition or preparation of food, and also to include confectionery, spices, flavouring substances and essences.

The principal specific regulations of food are contained in ss. 24-31. S. 24 enumerates the several facts which amount to adulteration or false description in the case of "any article of food, or substance, or compound or other article," and includes amongst other things any false or misleading description on any package of the nature, quality, strength, purity, composition, origin, age or proportion of any article of food or ingredients or substances contained therein. S. 25 prescribes maximums of chemicals in wine. S. 26 prescribes the maximum standards of injurious substances, such as lead, etc., in cooking utensils or appliances used in the manufacture, preserving, and storage of food, or conducting it for sale. SS. 27 and 28 go beyond foods. S. 27 prohibits the sale or manufacture of toys, wall-paper, decorative paper, paper serviettes, or paper used for the enclosure of food, in or upon which any paint, colour, facing, sizing, dressing, or varnish containing arsenium, or lead, or antimony, in any form or compound, or any specified substance exceeding such allowable quantity as may be prescribed by regulation (*i.e.* of the Board of Health). The same substances, and barium, are prohibited by s. 28 in regard to any textile substance

or leather intended for or capable of being used in the making of human clothing. S. 29 prohibits the use in beer, in excess, of arsenic, lead, copper, strychnine, coccubus, indicous, picric acid, or any substance or compound in excess of any proportion permitted by regulation. S. 30 prohibits the sale, "to the prejudice of the public health, or to the prejudice of the purchaser," of any germicide, disinfectant, antiseptic, or preservative; and the Board of Health may absolutely prohibit the sale of any such substance—not, however, till after hearing and considering the objections of any manufacturer, etc., concerned. S. 31 requires filtered water to be used in the manufacture of aerated waters. S. 32 prescribes the conditions of liability under these sections, as well as those under the Health Acts generally; the seller or manufacturer of any article sold or made under any such prohibition is guilty of an offence unless he proves—

(1) That, having taken all reasonable precautions, he had no reason to suspect a contravention;

(2) that on demand by the officer he gave all information in his power as to the person from whom he obtained the articles; and

(3) that otherwise he acted innocently.

We are reminded of the observation of Mathew J. in *Queen* v. *Justices of Kent* (1889) 24 Q.B.D. 185, as to these administrative statutes: "They substitute, as is the modern fashion, presumption for evidence." Of the same class is s. 37: "The onus of proof that any article of food or drug, or other article substance or compound or animal or carcass, has not been offered for sale or sold for human consumption, shall in every case be on the defendant."

By s. 15 articles in packages are to show the true net weight or volume, and the name of the vendor, or maker, and by s. 16 the person whose name is borne on a package shall, in case of any contravention of the Act in relation thereto, be deemed, unless he prove the contrary, to have committed the contravention, and unless the contravention is shown to be due to the default of the person in whose premises the package is found, or to deterioration or other causes beyond the control of the person named on the package, shall be liable to the penalties attaching to the contravention. S. 36 prescribes the penalties under the Acts—for a first offence, not exceeding £20; for a second, not less than £5 or not more than £50, and for a third offence not less than £10 or more than £100; and where the penalty exceeds £50, if in the opinion of the Court the offence was committed by the personal act, default, or culpable negligence of the defendant, the Court may substitute imprisonment, with or without hard labour, for three months. Conviction is also attended with forfeiture of all articles affected by the taint which brings about the conviction; and the Court may direct the publication of the name of the offender, his address, and the nature of his offence, in the Government *Gazette*. On a second offence, the matter *shall* be published in the Government *Gazette* "for public and

general information," and the Court may order that it shall be published in any newspaper (s. 39).

An interesting feature of the Act is the establishment of a Foods Standards Committee, consisting of the Chairman of the Board of Health, the Director of Agriculture, the Professors of Physiology and Chemistry in the University of Melbourne, the Medical Officer of Health of the City of Melbourne, and four other experts appointed by the Governor in Council. The function of this Committee is to advise the Board of Health in relation to the very extensive regulatory power conferred upon it by the Act.

This power extends to the prescription of food standards, the prohibition of the use of such appliances or methods in the manufacture, preparation, or conducting for sale, of foods as may be specified; and in certain cases the substances come under the control of the Board. Finally, the Board may make regulations "generally for carrying out the provisions of this Act, and for securing the cleanliness, freedom from contamination, or adulteration, of any article of food, or drug, or other article substance or compound and for securing the cleanliness of receptacles, places, and vehicles used for the manufacture, preparation, storage, packing, carriage or delivery of any article of food or drug or other article substance or compound" (s. 41).

In regard to machinery of administration, very extensive powers of entry and seizure for purposes of inspection are given to the officers administering the Act—*i.e.* the officers of the Board, of a municipal council, or authorised members of the police force. Amongst other things it is provided that when any sample of food offered for sale has been found, on analysis, to contain any substance the sale or use of which is prohibited, an officer may at all reasonable times enter upon the place where it has been manufactured, and may seize and fasten, secure or seal, the said article of food, or substance, and the possession on the premises of such article of food or substance is deemed *primâ facie* evidence that the same is kept in contravention of the Health Acts (s. 9).

By s. 11 if, in the opinion of the Chairman of the Board of Health, there is reasonable ground for suspecting that any person is in possession of, for sale or manufacture, any article of food or any drug or substance used therein in contravention of the Health Acts, he may require the production of any "books of the nature of store records, or dealing with" such articles, and may take copies thereof. The section is safe-guarded by the provision that any officer divulging to strangers any information obtained by him in consequence of action taken under this section, shall be liable to a fine of £50. S. 12 gives a general power of entry on premises where an officer has reason to suspect that there is being made, or produced, or packed, kept or concealed for sale, any article of food or drug in respect of which there has been, or is, an infringement of the Acts. S. 14 deals with the obstruction or corruption of officers.

Milk and Dairy Supervision (No. 2011).[1]—Previous to the passing of this Act, the milk supply of towns and the production and marketing of cream, butter and cheese were controlled by special clauses of the Health Acts. The present Act not only supersedes former legislation, but introduces a large measure of technical education amongst the dairy farmers. While the inspectors or "supervisors" have ample powers conferred on them to completely control the industry, they are expected not only to point out to the farmer what is wrong in his methods, but also to discuss the matter with him in a friendly way, and to show him that it is to his own interests to remedy any defects. It is therefore the aim of the Act to secure pure and wholesome milk and dairy produce, and at the same time to help the farmer to make his business more profitable financially.

The Act may be administered either by the Minister of Agriculture or by the local Municipal Council, but in both cases the supervisors are appointed only after passing a qualifying examination, and are paid a salary of not less than £150 per annum. Veterinary inspectors are also appointed to examine any animal which the supervisors suspect to be diseased.

The duties of the supervisors are set out as follows: To become personally acquainted as far as possible with every owner of a dairy farm, dairy, or factory, and the conditions of every dairy farm, dairy, and factory in his district; to confer with or advise such owner on matters connected with his farm, animals, premises, utensils, milk and dairy produce, when requested to do so, or when instructed to do so by the Minister; to inspect and examine all premises, utensils, and appurtenances, and also all animals and their food and water supply, and also all dairy produce at such dairy farm, dairy, or factory, in such manner and by such means as may be prescribed; to make such other inspection, examination, inquiry or investigation as may from time to time be directed by the Minister, and to report to the Minister the results of inspections in such form as the Minister may require, or as may be prescribed.

All dairy farms, dairies, and factories must be licensed. The annual licence fee for each dairy farm is fixed at 6*d*. per cow, and the licence is issued regularly on payment of the fee, unless the supervisor reports that the place is not in a suitable and sanitary condition. Owners must assist in carrying out the Act, and the onus of proof that any milk or dairy produce is not for sale is on the defendant. The supervisor may prohibit the use of the milk of a cow for two weeks, until the case has been reported on by a veterinary officer. In all cases of disease in animals the decision of the Minister is final and conclusive. Animals suffering from "notifiable" or "infectious" diseases must be isolated, and may be branded in a permanent manner, and every veterinary surgeon meeting with such cases in his practice must report the same. Stringent provision is made for the control of cases

[1] Contributed by Thomas Cherry, Esq., M.D., Director of Agriculture for Victoria.

of infectious disease occurring among the employés of any dairy farm, dairy, or factory.

The supervisors have free access to any farm, dairy, or factory, may examine all live-stock, machinery, or utensils, may take samples of any dairy produce, water, or fodder, and may open any package either in transit or on the premises. Ample powers are given to seize any produce, and to have any defects of construction or of cleanliness put right. Any produce that has been seized must be kept, if possible, in a cool store pending the result of legal proceedings. Newly established dairy farms or factories and alterations to existing ones must fulfil such requirements as may be prescribed. The expense of necessary alterations are paid by the landlord and tenant *pro ratâ* according to the length of the lease. The tenant may deduct his share of such cost from the rent. Advances up to £20 (repayable in five years) may be made by the Minister to a farmer to enable him to effect necessary improvements.

All milk and cream purchased by a factory must be paid for on the basis of its butter-fat value, and the factory must furnish monthly returns of the quantity of milk and cream purchased, the number of suppliers, the weight of butter or cheese manufactured, and the total sum paid to the suppliers.

Opium-smoking Prohibition (No. 2003).—Upon lines similar to New Zealand legislation, movements in favour of State legislation to regulate the opium traffic and to extirpate the vice of opium-smoking, have lately been manifested in several of the States of the Commonwealth, and the present Act hits the vice of opium-smoking in Victoria. The sections have a commendable brevity. No person shall smoke opium (s. 2). No person shall sell or deal or traffic in opium in any form suitable for smoking (s. 3). No person shall prepare or manufacture opium in any form suitable for smoking (s. 4). No person shall have in his possession, order, or disposition, opium in any form suitable for smoking (s. 5). No person shall have in his possession, order, or disposition, opium in any form which, though not suitable for smoking, may yet be made suitable, unless he holds a permit so to do, issued by the Governor in Council, who may at any time cancel the permit (s. 6). Then s. 7 sets forth the particulars which a permittee must record in a book kept for the purpose, of the opium he is permitted to keep in his possession, and the purposes for which it has been used. S. 8 gives the meaning to be attributed to "possession." S. 9 enables any member of the police force who has reasonable cause to suspect there is in any house or premises any opium in contravention of the Act, and that opium is being smoked therein, to obtain from the Chief Secretary a special warrant and enter and search and carry away such opium, and to arrest all persons found therein offending against the Act, and the opium so seized is to be destroyed upon the conviction of the offender. The Act provides, in s. 10, that offenders against any of the provisions of the Act are to be liable to a penalty of not less than £10, and not more than £200, or to

imprisonment, or to both. Though the Act was passed in December, 1905, its operation was postponed till May 1, 1906, to enable traders in opium with stock on hand to dispose of the same, and save the State paying any compensation for its destruction.

Poisons (No. 1986).—This Act amends the principal Act of 1890—No. 1125. The protection given by the principal Act to the public in requiring in the sale of poisons a conspicuous labelling of the word "Poison" upon the bottle, box, vessel, or wrapper containing the poison, and an entry in a record-book of full particulars of the sale are, by s. 3 of the amending Act, not to apply to any prescribed medicine made up from a physician's prescription, nor to homœopathic medicines except in the crude state in other tinctures or of a greater strength than the third decimal potency. All sales of medicines, however, which are for external application, and which contain poison, must fulfil the requirements of the principal Act.

In s. 4 is a list of materials and articles to which the principal Act is not to apply, viz.:

(*a*) Patent medicines.

(*b*) Photographic materials (other than cyanide of potassium).

(*c*) Cyanide of potassium to be used for mining purposes, if sold in quantities of not less than twenty-eight pounds.

(*d*) Veterinary medicines.

(*e*) Poisoned material for the destruction of vermin.

(*f*) Fly-poison papers.

(*g*) Poisons by wholesale dealers in the ordinary course of wholesale dealing, where an order in writing signed by the purchaser has been given for the supply of the same; but, in cases (*c*) and (*g*) a record of the sales must be made in a prescribed book; in cases (*b*) and (*e*) the sale must not be to a person under eighteen years of age, or to an unknown person except under certain restrictions; and in all the above cases, when the materials or articles contain poison, a statement of the fact must appear on the bottle, box, vessel, or wrapper containing the same, and bearing, in addition, the name and address of the seller. A penalty of £20 follows the breach of any provision in this 4th section and in a prosecution under the section it is sufficient *primâ facie* proof that materials or articles commonly sold under the same name and description as the particular material or article in question consist of a certain poison. By s. 5 (*a*) police magistrates may give to any dealer in photographic materials a certificate that he is a fit and proper person to sell cyanide of potassium for photographic purposes; whereupon the magistrate notifies the Pharmacy Board of Victoria of such certificate being given, and it remains good until cancelled by proper authority.

The Talbot Colony for Epileptics (No. 2015).—This Act incorporates the subscribers to the Talbot Colony for Epileptics and provides for its Government.

Factories and Shops (No. 1975).—This is an Act to consolidate the law relating to the supervision and regulation of factories, workrooms, and shops, and for other purposes. In 1890 the law upon this subject was consolidated, in common with the rest of the public statutes of Victoria; but since that time the law has been frequently amended, and some important innovations have been made, principally in the establishment of wages boards, with power to prescribe a minimum wage in certain industries. In fact, since 1896, hardly a session has passed without some amendment of the law. The consequence was that a point of law bearing upon the conduct of large numbers of citizens, and in many cases imposing on them duties of a positive kind, sanctioned by severe penalties, was becoming hardly "cognoscible." The Act consists of 163 sections, and is divided into thirteen parts, of which several are further sub-divided. It is impossible to deal here with the variety of matters which it contains, many of which—the more novel and distinctive matters—have been described in the review of legislation of preceding years.

Factories and Shops (No. 2008).—It is unfortunate that the Consolidation Act should be followed in the same session by another Act of thirty-four sections, in some cases amending the principal Act, and in many cases referring to and reading into it. This inconvenience, however, is mitigated by the provision of s. 351 that any reprint of the principal Act shall be in its amended form.

The new Act contains provisions designed to prevent the outbreak of fire in factories and workshops, and to facilitate means of escape by prohibiting the obstruction of passages and staircases, and requiring the provision of appliances ready for use (ss. 5-7). S. 16 enables the awards and powers of the Special Boards for fixing wages to be extended to any trade or business which in the opinion of the Governor in Council is of the same or similar class or character as that for which the Board was appointed, and "a copy of the Government *Gazette* containing an order so extending the powers of a Special Board shall be conclusive evidence of the making of such order, and such order shall not be liable to be challenged or disputed in any Court whatever." S. 21 deals with the hours of closing in the case of shops within "the Metropolitan District," which includes the municipalities about Melbourne. These shops are required to close at 6 p.m. on four days of the week, at 1 p.m. on Wednesday or Saturday, and at 10 p.m. on Friday or Saturday. In the case of "uncooked meat shops" earlier hours are prescribed—5 p.m. on three days a week, 6 p.m. on a fourth, and 9 p.m. instead of 10 p.m. A schedule enumerates several classes of shops—bicycles, boot-repairers, dairy produce, flower, hairdressers, and pawnbrokers—whereof

the closing time is 8 p.m. on four days, 1 p.m. on Wednesday or Saturday, and 8 p.m. on Wednesday or 11 p.m. on Saturday, according as the one or the other day is chosen for the half-holiday. The choice is made by the individual shopkeeper, but if the same person has more than one shop situated within a mile of each other in the Metropolitan District he must choose the same half-holiday for each. There has been much dissatisfaction concerning the compulsory closing at 5 or 6 p.m., and it is possible that this provision may be reconsidered by Parliament. In the case of a fourth class of shops—chemists, coffee-houses, confectioners, eating-houses, fish and oyster, fruit and vegetable, restaurants, tobacconists, and booksellers and newsagents—the Governor in Council in the Metropolitan District, and the municipality in other districts, may prescribe a time for closing on all days in the week during the whole or part of the year, or on one day from 1 p.m., but only upon petition of the majority of the class of shopkeepers concerned in the municipality (ss. 20 and 25, which amend provisions of the principal Act on the subject). S. 30 repeats the provision of the principal Act prohibiting the sale of milk on Sunday after 12 noon. By s. 32 the Court of Industrial Appeals is to have power, in reviewing the awards of the Special Boards for Wages, either to increase or decrease the rates of payment fixed, whether for piece- or time-work. S. 33 provides that, save in the class of shops mentioned above—chemists, coffee-houses, etc.—no occupier of a factory or shop shall lodge or board adult employés, or have any share in any house in which his employé boards or lodges; but, with the consent of the Chief Inspector of Factories, and subject to conditions imposed by that official, he may accept money for board or lodging from an employé.

Education.[1]—Three important Acts affecting education were passed through the State Parliament during the session of 1905, namely, The Amended Education Act, The Amended Public Service Act relating to State School Teachers, and The Registration of Teachers and Schools Act.

Amended Education (No. 2005).—This Act refers to the compulsory clause, and is designed to make the conditions of school attendance more stringent. Before the passing of this Act children between the ages of six and thirteen years were required to attend school at least 75 per cent. of the number of school days of each quarter. In practice it was found that the beginnings of defaulting attendance were not checked efficiently, and that it was easy for a parent to neglect to send a child to school during the early part of a quarter and excuse himself to the Court by representing that the child's attendance just prior to the summons had greatly improved. Again, magistrates were inclined to deal leniently with school offences committed several months before the hearing of the case.

Under the new Act every child between the ages of six and fourteen years is required to attend school at least eight times out of ten times that

[1] Contributed by Frank Tate, Esq., I.S.O., Director of Education for Victoria.

the school is open in a week for instruction, at least six times when the school is open eight times in a week for instruction, and at least four times when the school is open six times in a week for instruction. (By "times" is meant "school half-days.") Under the amended law prosecutions are instituted in respect of defaulting attendance during any week or weeks. (The first six months of the operation of the Act show that a very great improvement in the attendance has been secured.)

An important change affecting Victorian primary education is the raising of the compulsory age from thirteen years to fourteen years. A change was also made with respect to the conditions under which attendance at a State school was not mandatory. It is now enacted that a child must attend a State school unless it can be shown that he is under efficient and regular instruction in some other manner, and the terms "efficient and regular" are defined in the Act as "such instruction in the subjects of the standard of education (reading, writing, arithmetic, spelling and composition) as may be prescribed under the Education Acts, and it is further provided that children attending schools other than State schools must comply with the like conditions of attendance at those schools as are prescribed with regard to attendance at State schools.

State School Teachers (No. 2006).—The Act to amend the law relating to State school teachers is a most comprehensive one, and deals with the question of the classification of State teachers, with the mode of future promotions and transfers, and further provides fixed salaries for teachers in lieu of a fixed salary, together with a proportion to be paid "by way of results."

The State teachers of Victoria are classified by a Board of Classifiers, and the Act changed the constitution of this Board from "three officers of the Education Department nominated by the Governor in Council" to "the chief inspector of schools for the time being, a teacher of the first class elected by the classified teachers, and some person—not being an officer of the public service—to be appointed by the Governor in Council." The most important change with reference to the classification of teachers was the institution of an annual promotion list of teachers selected by the Classifiers as being the persons in each class most deserving of promotion to the next higher class. It should be pointed out that since 1885 each class of teachers has been further divided into three sub-classes, and these three sub-classes corresponded roughly to orders of merit within the class. Owing, however, to an unfortunate block in promotion, brought about by legislation in 1895, teachers in some of the largest classes had no opportunity of advancement, and from time to time the number of teachers in the first sub-class was added to. As teachers were promoted from the first sub-class in order of seniority in the sub-class, a method of promotion by seniority was thus established, and it became impossible for the administration to recognise quickly exceptional worth shown by comparative juniors. The Act provides that the

Classifiers shall each year select from the first sub-class of each class the names of those teachers whom, on the grounds of "approved teaching and organising ability, general conduct and interest in work, literary qualifications and length of service," they consider best entitled to promotion. The promotion list lasts for one year only, and therefore cannot become congested as did the first sub-class.

The method of transferring teachers, where such transfer did not carry promotion, had also become cumbrous and ineffective, and under the new Act additional powers are given to the Director to transfer teachers where necessary in the public interest. It is also provided that vacancies shall be thrown open to all teachers eligible for transfer in any given class, and that, other things being equal, the teacher highest on the classified roll shall be nominated to the vacancy.

As new schemes of training teachers are now being worked out in Victoria, the term "pupil teacher" is abolished, and future candidates for the teaching service are to be known during their period of training as "junior teachers." These junior teachers will be on probation for the full term of their apprenticeship.

Fixed salaries are provided for all teachers, and these salaries will not be subject to deductions in accordance with the result of the annual examinations of the schools. In fixing these salaries, the average salary paid to the teachers of each class throughout the State was taken as the basis of computation. As annual sub-divisional promotions are provided for each class of teachers, a teacher may be refused an increase of salary because of inferior work. It is further provided that, for exceptional merit, a teacher may receive two or more increases at one time.

In the Act there are several important provisions giving the Director more discretionary power in the establishment of special schools, to be used in connection with the training of teachers.

Registration of Teachers and Schools (No. 2013).—By the Registration of Teachers and Schools Act a beginning has been made to bring about a very necessary correlation between the different grades of education in Victoria. Heretofore there has been practicably no supervision over the establishment and carrying on of private primary and secondary schools. The best of the teachers employed in these schools were for long advocates of a system of registration in order that unqualified persons might be prevented from taking up the work of teaching. The Act provides that a Board, to be known as "The Teachers and Schools Registration Board," acting in an honorary capacity, shall be appointed by the Governor in Council. Of the persons so appointed, three shall be representative of the Education Department, four shall be representative of schools other than State schools, two shall be nominated by the Council of the University, and one shall be representative of the State-aided technical schools.

It is the duty of the Board to make and keep a register of schools and a

register of teachers. It should be mentioned that the operations of the Board do not affect State schools or any school aided by the State. Registered schools are to be classified as sub-primary, primary, or secondary schools, or as schools with any two or three such departments. Neglect to register a school is a contravention of the Act. When schools are registered it is the duty of the proprietor to have, legibly printed in a conspicuous place near the main entrance to the school, the name of the school, the name of the proprietor or head-teacher of the school, and the fact that it is registered as a sub-primary or secondary school.

The Board is empowered to appoint any person to enter any building used as a school for the purpose of ascertaining whether the building is supplied with proper access, drainage, light, ventilation, and sanitary conveniences, and generally whether it is efficient for school purposes. This work will be carried out in conjunction with the State Department of Health, which will take action if any school building is reported by the Registration Board as unsuitable in any way.

All teachers in schools are to be registered either as sub-primary, primary, or secondary teachers, or as teachers of special subjects. In dealing with vested interests, it is provided that every person employed as a teacher before the passing of the Act should, if he applied for registration within a specified time, be registered without further or other proof as to qualification. The Board is empowered, with the approval of the Governor in Council, to make regulations for determining the courses of study and training and examinations entitling persons to be registered as teachers. For any contravention of the Act a penalty of £50 may be recovered by the Registrar of the Board. The income of the Board is derived from registration fees, 5*s*. being the fee for the registration of a sub-primary or primary school, or teacher of a special subject, and 10*s*. for the registration of a secondary school or teacher.

Water (No. 2016).[1]—This is a consolidating and amending Act of far-reaching importance. In 1886 the Legislature, having in view the necessity of works for irrigation and storage of water, imposed restrictions on the use of natural waters by the inhabitants of Victoria. Since that time the necessity has become still more imperative, particularly as the tendency towards smaller holdings and intense culture has grown more marked. The present Act is, in its main features, the natural result of these changes in agricultural methods, and is a corollary to the Closer Settlement Acts recently enacted. The principles of the common law as to riparian rights and the ownership of the beds and banks of streams are not suitable to Australia, where the physical and climatic conditions governing the conservation and supply of water, and the use and cultivation of land, differ so widely from those of England. Consequently, in New South Wales, the *Water Rights Act* of 1896 was passed, declaring the law on these subjects

[1] Contributed by J. T. Collins, Esq., Assistant Parliamentary Draughtsman.

in that State, and the Act now under consideration has, as one of its principal features, the definition of all rights in natural waters, both on the part of the Crown and of private persons.

Rights in Natural Waters.—The Act deals with all natural waters which form the whole or any part of the flow of any river, creek, stream, or water-course. The right to the use, flow, and control of all such waters is vested in the Crown, subject only to statutory restrictions thereon. The property in the bed and banks of any river, stream, creek, or water-course, forming the boundary of land heretofore or hereafter alienated from the Crown remains in the Crown; but the riparian owner has access to the bed and banks, and a remedy against trespassers. Diversions of water are prohibited, except under statutory sanction. Owners of riparian lands alienated from the Crown before 1886 are entitled to water for domestic and ordinary use, and for watering cattle, and for irrigation of a garden not exceeding three acres in extent, and used in connection with a dwelling; and if any such owner can show that he, or his predecessors in title, for twenty years before 1886, and up to the date of the present Act, has diverted and appropriated water for purposes other than those mentioned, he may obtain a special licence to continue such extraordinary diversion and appropriation for a further period of ten years free of charge.

Authorities.—The administration of the provisions of the Act dealing with the issue and conditions of licences for diversions is placed in the hands of a Commission consisting of three Commissioners, which has numerous other duties and powers.

Under the former Water Acts there were, broadly speaking, two classes of water authorities, namely, "Irrigation and Water-supply Trusts" administering rural districts, and "Waterworks Trusts," providing a supply of water for domestic and ordinary purposes in urban districts. There were some other authorities to meet the requirements of special localities, which need not be further described. The Act does not materially affect the majority of the "Waterworks Trusts." But the "Irrigation and Water-supply Trusts" have been abolished, and are replaced by the Commission before referred to. This Commission acts throughout the State, and deals, as a central authority, with all the matters concerning irrigation and water-supply, which were formerly within the local jurisdiction of the Irrigation Trusts. The Commission has all the powers conferred upon authorities in general under the Act; and, in addition, it acts for the Crown in preventing interferences with the supply and flow of natural waters; it has special powers with regard to the supply of water from State works. It does not, however, construct any works of supply. These are constructed by the State, and are vested in the Commission on completion.

Rates and Charges.—The Commission is required to prepare for each district under its control a register of lands, containing a description thereof, and a classification of the lands according to the suitability of

the soil for irrigated culture. This register forms the basis of the apportionment of water rights for irrigation, and for fixing the amount of the "irrigation charge." This charge is levied upon the occupiers or owners of all lands, to which water rights for irrigation have been apportioned. It is graduated in amount according to the classification of the lands, and in the highest class may be equal to one-fifth of the net annual value of the lands.

Before supplying water for irrigation, a supply for domestic and ordinary use is first provided; and for this a general water-rate of so much in the pound of the net annual value is made and levied by the Commission.

In districts under the control of Waterworks Trusts and other authorities which do not supply water for irrigation, the water-rate is also fixed on the last-mentioned basis.

All authorities may supply water in quantities by agreement, for specified purposes, and make a charge for such supply.

Other Provisions.—The foregoing are the most important of the innovations in the present Act. The Act contains 377 sections, and makes provision in detail for the complex machinery required for its administration by the several authorities upon which it imposes duties and confers powers, as well as for the rights and liabilities of these authorities *inter se.* These enactments, however, are not here specified, since they are substantially the same as in the earlier Acts, though they have been amended in many matters of administrative detail.

Probate Charges (No. 1970).—This is an Act amending the Probate Charges Act of 1903. The earlier Act was passed to reduce legal charges for obtaining probate and letters of administration, and it provided scale fees. Where an estate was under £600 the charge for obtaining probate was fixed at £6; for every additional £100, or part of £100, up to £1,500, a further charge of 10*s.* was fixed, and thereafter for every additional £500, or part of £500, up to £5,000, a further charge of 10*s.* was fixed. In letters of administration the scale was a little higher, because generally more legal work is necessary. The Act also made provision that where special or unusual work in obtaining probate or administration had been done, the legal practitioner could claim extra costs therefor, and that the taxing officer should tax the bill of charges. A State decision in the Supreme Court interpreted this to mean that where there was special and unusual work done, and extra costs charged, the whole bill had to be taxed, and the amount fixed for costs according to the scale was to be disregarded in any such case. The new Act makes plain that in any case where extra costs are rendered necessary, the taxation is to be only as to such extra costs, and the scale charges are still to remain. This Act further alters the scale to a fee of £4 where the estate does not exceed £400, and to a fee of £5 where the estate does not exceed £500. It fixes, too, the maximum fee at £5,000, no matter what the value of the estate may be;

that is, the fee will be no higher if an estate is £50,000 than if it had been but £5,000.

Administration and Probate Duties (No. 1984).—This Act continues for a further period of twelve months (December 31, 1905, to January 1, 1907), the increased duty or tax payable by the estates of deceased persons, and first imposed by the *Administration and Probate Duties Act*, 1903, a note as to which has already appeared in this Society's Journal, vol. xiv., N.S., pp. 373-4.

Friendly Societies (No. 1967).—The preamble to this Act recites the expediency of making "better provision for the safe keeping of any bonds or debentures representing any part of the funds of registered friendly societies or their branches, and for the protection of the trustees of the said societies and branches in respect of all bonds or debentures held by said trustees," and the Act introduces a mode whereby such bonds and debentures become non-transferable. A note of ownership is written on the face of the bond or debenture, and is signed by any trustee of the society, or of any of its branches, whereupon the bond or debenture ceases to be transferable, and the principal money represented by it (though not the interest coupons) can be paid only to the trustees (ss. 3 and 4). This note of ownership may be at any time cancelled by a cancellation note signed by the trustees of the friendly society, and thereupon the bond or debenture again becomes transferable and passes by delivery as fully as if the note of ownership had never been endorsed upon it. The Act will save such societies the expense previously incurred in having bonds and debentures taken charge of by banks for safe custody: it is drawn on the line of an earlier Act passed in 1903 in connection with bonds and debentures held by the Melbourne Tramways Trust, which has been found to be extremely useful.

Treasury Bonds Conversion (No. 1990).—This Act authorised the issue of stock or debentures to the amount of two millions sterling for the purpose of (*a*) redeeming certain Treasury bonds (£1,747,000), and (*b*) irrigation and water-supply (£200,000). S. 7 provides for the annual payment of 1 per cent. on the sum borrowed under the Act to the Victorian Loans Redemption Fund, which sum is to be so placed and paid annually until the amount borrowed is redeemed or paid off.

Secret Commissions Prohibition (No. 1974).—This measure embodies the chief provisions of the Bill framed by the late Lord Russell which has become law to prohibit the giving or receiving corruptly of commissions. The new features in it are that its prohibitions apply to trustees, executors, administrators, and liquidators, as well as to agents, and also to secret commissions given in return for advice to influence the making of a contract with a third person on the appointment of a trustee; that the Attorney-General must give a consent to a prosecution being initiated; that in a prosecution evidence of a custom of trade is admissible, but is not a defence; that a prosecution is to be initiated within two years after the commission of the offence, or six

months after the principal or the person advised discovered the offence, whichever first happens, and that in a trifling or technical case the Court need not proceed to a conviction, but may withdraw the charge from the jury. As a matter of fact, not a single prosecution has been yet initiated under this Act, though it has already been in operation for eight months. The provisions of the Act, in outline, are: That the receipt or solicitation of a secret commission by an agent, or the gift or offer of a secret commission to an agent, is a misdemeanour (s. 2); that gifts to the parent, wife, child, partner, or employé of the agent are deemed to be gifts to the agent and received by him until the contrary is proved (s. 3); that to give to an agent, or for the agent to receive, or use, or to give to his principal, false or misleading receipts or accounts, is a misdemeanour (s. 4); that to give or receive a secret commission in return for advice, given to influence the person advised to enter into a contract with a third person or to appoint or take part in the appointment of any third person or a trustee, or to offer or solicit a secret commission in return for such advice, is a misdemeanour (s. 5); that to offer or give a secret commission to a trustee to appoint, or authorise the appointment, of some one in his stead as trustee, is a misdemeanour (s. 6); that the Act is to apply to aiders and abettors (s. 7); that directors, managers, and officers of a company taking part in any prohibited Act are to be guilty (s. 8); that the penalty is, in the case of a corporation, to be not exceeding £500, and in the case of a person the like penalty, *and*, *or*, imprisonment for two years, and to repay the amount of the secret commission (s. 9); that the Court may order the withdrawal from the jury of any trifling or technical offence against the Act (s. 10); that a witness shall not refuse to answer any question which may criminate him, but is to be protected from a prosecution and entitled to receive a certificate to protect him when he has truly answered all questions required by him, and any proceedings against him may then be stayed (ss. 11 and 12); that a custom in any trade or calling to pay such secret commission is of itself to be no defence to a prosecution (s. 13); that the burden of proof that a gift received is not a secret commission is to rest on the accused (s. 14): the limit of time (*supra*) for a prosecution (s. 15): the consent of the Attorney-General to the prosecution (s. 16); that the information for an offence under the Act is to be upon oath (s. 17); and lastly the interpretation, extending term "agent" to trustee, executor, administrator, and liquidator, and defining the other terms used (s. 18).

Land (No. 1991).—In s. 2 of this Act a power is given to the Minister of Lands (not given in the principal Act of 1901) to modify or dispense with any of the conditions upon which swamp and reclaimed lands are leased or sold. The principal Act of 1901 requires the lessee or purchaser to expend in each of the first three years of his occupation of such lands a sum of not less than 10*s.* per acre in permanent improvements, and this was felt to be too onerous a condition to be observed in all cases,

and the Minister may now modify or dispense with this condition in any particular case.

In s. 6 of this Act a further alteration is made in the principal Act of 1901, in regard to settlers on Crown lands: for under the principal Act the value of the land selected is paid for by instalments, and no interest is charged to the selector on the deferred instalment, but now, in regard to the more valuable land, say land resumed by the Crown, and of a higher value than £3 per acre, the new settlers will be charged 4½ per cent. per annum on the deferred instalments of their purchase-money, just as if it were a sale out-and-out beween private individuals.

Ss. 9-12 deal with the position of a licensee of a bee-farm site grantable over Crown lands already leased out to lessees under the principal Act of 1901. The bee farmer is given full right of ingress, egress, and regress over the land to which his licensee extends, but by the shortest practicable route between his bee farm and any public road, and with a duty upon him to close gates and slip-panels used by him under penalty for breach of such duty of £5, recoverable in any Court of Petty Sessions. His bee-farm licence is subjected to the following conditions: it is annual, and an annual fee has to be paid; it is renewable from year to year, for a period of seven years; it may be cancelled at any time by the Minister administering the Act; no careless use of fire is to be permitted; no dog is to be kept on the bee farm; no subletting is to be made without the consent of the said Minister; no fences are to be erected except as the boundary of the bee farm and as approved; and the bee farmer is to erect, at his own risk, any building or improvements, and to remove them at the request of the said Minister and without any right to receive compensation therefor. The lessee of the Crown land over which the bee farmer has a licence may himself keep as many as ten hives of bees, without the necessity of taking out any licence therefor.

Lastly, this Act deals with Bee-range Areas. Land available for being licensed for such areas may be proclaimed by the Governor in Council. A bee-range on a licence will confer on the licensee a right to the use by his bees of any trees within one mile of the site of the apiary of the licensee, but gives no right to the licensee to enter or remain on the land over the trees of which the bees have the use, and the actual lessee of such land is not to ring, bark, or destroy any timber on any land within a bee-range area without one month's previous notice to the licensee of the bee-range area or the sanction of the Board of Lands and Works. The licence is an annual one, for which not less than one halfpenny per acre is to be chargeable, and it may be renewed from year to year for a period of seven years by the Minister, or it may be cancelled at any time by the same authority. There is a restriction placed on the transfer of such bee-range areas, and no bee-range area is to be within two miles of the site of any other such area, and no licensee can hold more than thirty such areas.

The Registration of Deeds (No. 1966).—In the registration of deeds relating to realty in Victoria the Real Property Act, 1890, s. 185, required a written memorial to be made, with particulars of the deed, and to be signed by one of the parties to the deed, and such memorial to be verified and registered. The practice of conveyancers was to prepare the deed or conveyance, engross it and make it ready for signature, and to prepare at the same time a memorial and make it ready for signature. The parties then appended their signatures to the deed, and the memorial was then placed before the parties, and one of them signed it, in blank so far as the date of the deed and the name of the witness were concerned, and the person verifying the memorial filled in any such blanks as well as making any necessary corrections, so that the memorial agreed with the deed. This practice was declared, in the case of *Derbyshire* v. *Derbyshire* [1905], V.L.R. to give imperfect registration, and it was held that a deed was not properly registered in law if the memorial of it at the time it had been signed by the party to the deed did not contain the day and month of the execution of the deed, or the name of the attesting witness, though such particulars were inserted before registration. Upon appeal to the High Court of Australia this decision was reversed (2 C.L.R. 787). In the meantime the Act in question was passed, declaring that a memorial may be completed after signature, and that a deed is not to be deemed imperfectly registered by reason only that after the memorial was signed corrections necessary to make the same agree with the deed were made, or particulars were filled in before verification (s. 2). The particular action of *Derbyshire* v. *Derbyshire* (*supra*) was not to be affected (s. 3).

South African Contingents Pensions (No. 1997).—This Act provides pensions, temporary or permanent, for a number of disabled members of Victorian Contingents, and for the widows or other dependents of men who died in South Africa. The Act provides that no pension shall continue to be paid to a widow or other relatives whose private means or circumstances are, in the opinion of the Governor in Council, such that they do not need assistance. A widow's pension ceases on re-marriage; pensions payable in respect of sons terminate at sixteen, of daughters at eighteen or marriage. Pensions are protected against the claims of creditors.

Municipal Grounds (No. 1972).—Municipalities are permitted by by-law or regulation to impose a charge upon clubs, associations, or persons for the use of pleasure-grounds provided or controlled by the municipality, provided that the consent of the Governor in Council has been obtained, and that the same authority may at any time amend such by law or regulation. No charge may be imposed wherever that would be contrary to the terms of any gift or grant to the municipality; and all money derived from these charges is to be devoted to the maintenance and improvement of the public places in question, including the provision of musical performances.

Melbourne and Geelong Married Women's Municipal Franchise (No. 1989).—The Act removes the disability of coverture in respect to voting at municipal elections in the City of Melbourne and Town of Geelong, the two oldest municipalities in the State, whose constitution is governed by special laws. In the case of municipalities which come under the Local Government Act, the disability was removed many years ago.

St. Kilda and Brighton Electric Street Railway (No. 1973).—This Act is notable as establishing the first electric railway in the State. The line is constructed and worked in connection with the State railways; but the municipalities through whose district the line runs were required to give a guarantee for the interest for twenty years at 4½ per cent. on the money expended in (1) the purchase of land; (2) compensation to persons injuriously affected; (3) the cost of construction. Any enhanced value of Government lands in the vicinity of the railway is to be set off against the cost of construction.

Victorian Railways, Motor (No. 1983).—The Railway Commissioners may, with the consent of the Governor in Council, provide motor-cars as "feeders" to the railway in any part of their system. The Local Government Laws, or the laws relating to carriages, are not to apply to these motors, but the Commissioners are to pay to the municipality the fee that would have been payable if the vehicles had been licensed as hackney carriages, and the motors are to be subject to any law in force in relation to motor carriages, unless it be otherwise expressly provided.

6. SOUTH AUSTRALIA.

[*Contributed by.* A. BUCHANAN, ESQ.]

The Legislation of this Colony for 1905 has already appeared.

7. WESTERN AUSTRALIA.

[*Contributed by* R. W. LEE, ESQ.]

Acts passed—29.

Life Assurance (No. 12).—This Act amends the Life Assurance Companies Act, 1889.

S. 2: The interest of the assured in a policy effected upon his own life is not liable for his judgment debts and does not pass to his trustee in bankruptcy. Nor are moneys payable upon death by virtue of such policy liable to satisfy a judgment unless by virtue of (*a*) a contract or charge made by the assured during his lifetime, or (*b*) an express direction contained in his will. This does not include a general direction or trust or charge for the payment of debts.

The Act does not apply (1) until the policy has endured for at least two

years, except in case of the death of the assured, (2) except to policies the premiums on which are expressed to be made during the lifetime of the assured, or during ten years at least, and to be payable by equal instalments of not more than a year.

S. 4: In case of the loss or destruction of a policy, the company after public advertisement may, and by order of Court must, issue a special policy, and the lost or destroyed policy thereupon becomes void.

S. 6: Section 33 of the principal Act is repealed.

Secret Commissions (No. 13).—The following acts are constituted misdemeanours: (1) receipt or solicitation of a secret commission by an agent [s. 2]; (2) gift or offer of a secret commission to an agent [s. 3]; "Agent" includes the agent's parent, husband, wife, child, partner, clerk, or employee [s. 4]; (3) giving to an agent a false or misleading receipt or account [s. 5]; (4) gift or receipt of a secret commission in return for advice given [s. 6]; (5) offer or solicitation of secret commission in return for advice given [s. 7]; (6) offering or solicitation of a reward to or by a trustee for authorising another person to be substituted in his place [s. 8].

The penalty in the case of a corporation is a fine not exceeding £500, in the case of any other person a fine to this amount or (and) imprisonment up to two years [s. 11].

The custom of any trade or calling is not in itself a defence to a prosecution under the Act [s. 15]. The burden of showing that a gift was offered or solicited otherwise than in contravention of the Act is cast upon the accused [s. 16]. No prosecution may be instituted without the consent of the Attorney-General [s. 18].

Aborigines (No. 14).—This is an Act to make provision for the better protection and care of the aboriginal inhabitants of Western Australia.

S. 3: The term "Aboriginal" includes (*a*) an aboriginal inhabitant of Australia; (*b*) a half-caste who lives with an aboriginal as wife or husband; (*c*) a half-caste who otherwise than as wife or husband habitually lives or associates with aborigines; (*d*) a half-caste child whose age apparently does not exceed sixteen years.

S. 4 establishes an Aborigines department charged with the duty of providing for the preservation and well-being of the aborigines. S. 5: The sum of £10,000 per annum is to be appropriated for this purpose.

S. 6 defines the duties of the department. S. 7: A chief protector of aborigines is to be appointed by the Governor and is responsible under the Minister for the administration of the department.

S. 9 prohibites the removal of an aboriginal to any place beyond the State without the written authority of a protector.

S. 10: The Governor may declare any Crown lands to be reserves for aborigines. S. 12: Aborigines may (with some exceptions) be removed to reserves and kept there. S. 14: No other persons may enter a reserve except officials.

S. 17: The employment of aboriginals, or of a male half-caste under the age of fourteen years, or of a female half-caste, is only allowed under permit from a protector, or under permit and agreement. S., 9: The duration of a permit is limited to twelve months. S. 20: Aboriginals and half-castes may not be employed on ocean-going vessels.

S. 22 regulates the terms of agreements of service and employment. S. 23: A duplicate of every agreement is to be sent to the protector.

S. 33: The protector may manage the property of aboriginals, but not without the consent of the owners, except so far as may be necessary to provide for the due preservation of such property.

The remaining sections of the Act are taken up with miscellaneous provisions for the morality and well-being of the aboriginal races. The Governor is empowered to make regulations to carry out the purposes of the Act (s. 60).

Statutes Compilation (No. 15).—When directed to do so by a resolution of both Houses of Parliament, the Attorney-General shall undertake the compilation of any Act in force in the State with its amendments. He may make consequential and other alterations in order to give effect to implied repeals, to secure uniformity of expression, etc. The compilation shall then be certified as correct by the Attorney-General, and shall be laid upon the table of each House of Parliament at the commencement of the next succeeding session. It may then be passed into law by an enacting statute with two appendices; Appendix A to contain a list of Acts and parts of Acts comprised in the compilation; Appendix B to contain the full text of the compilation. The enacting statute shall repeal the Acts comprised in Appendix A. It is not competent to amend or alter either of the appendices, otherwise than for the correction of errors of transcription or printing, or for the incorporation of any amendment, which may have been made after the preparation of the compilation and before the passing of the enacting statute.

Fisheries (No. 18).—An Act for the Regulation of Fisheries. Previous Acts are repealed.

Totalisators (No. 19).—Totalisator "means and includes the instrument, machine, or contrivance, commonly known as the totalisator, and any other instrument, machine, or contrivance of a like nature, or any scheme for enabling any number of persons to make bets with one another on the like principles."

A duty of 2½ per cent. is charged on the takings of totalisators. Accounts are to be forwarded to the Colonial Secretary. All moneys payable by a race club under the Act are debts due to His Majesty jointly and severally by the Secretary and the persons who are members of the Committee or executive body.

Stamps.—No. 20 amends the Stamp Act, 1882, and substitutes a new Schedule for Schedule A of the principal Act.

Miscellaneous Acts:

Mint.—No. 3 amends the Perth Mint Act, 1895.

Waterworks.—No. 5 amends the Water Works Act, 1889, and the Metropolitan Water Works Act, 1896.

By No. 25 the last-named Act is further amended, the borrowing powers of the Metropolitan Water Works Board being increased to £820,000.

Education.—No. 6 amends the Public Education Act, 1899.

Electric Lighting.—No. 7 amends the Electric Lighting Act, 1892.

Agricultural Bank.—No. 8 amends the Agricultural Bank Act, 1894.

Fertilisers and Feeding Stuffs.—No. 10 amends the Fertilisers and Feeding Stuffs Act, 1904.

Juries.—No. 11 amends the Jury Act, 1898.

Bills of Sale.—No. 17 amends the Bills of Sale Act, 1899.

Wines, Beer, and Spirit.—No. 21 amends the Wine, Beer, and Spirit Sale Act, 1880.

Land.—No. 22 amends the Land Act, 1898.

Fire Brigades.—No. 23 amends the Fire Brigades Act, 1898.

8. BRITISH NEW GUINEA.

[*Contributed by* W. F. Craies, Esq.]

Ordinances passed—5.

This British possession will from 1906 be governed as a territory of the Australian Commonwealth under the name of Papua.

The Papua Act, 1905, of the Commonwealth (No. 9 of 1905), after reciting the history of British New Guinea, declares its acceptance as a territory under the authority of the Commonwealth by the name of Papua (s. 5). All Ordinances of the possession (or Acts or Statutes of Queensland and all possessions adopted as an Ordinance of the possession), which relate to certain matters, reserved by s. 41, are to be forthwith submitted to the Governor-General in Council, and may be disallowed within three months from submission. Their annulment is to take effect on proclamation or notification in the Government *Gazette*. The Commonwealth laws are not in force in Papua except as specially provided by the Act of 1905 (s. 7).

The Executive Government of the territory is in the Lieutenant-Governor, and there is a Legislative Council consisting of the Lieutenant-Governor, the members of his Executive Council, and of non-official members appointed by the Governor-General, or by the Lieutenant-Governor under his instructions. The number is regulated by the white population of the territory (s. 30).

Ordinances do not become law till assented to by the Lieutenant-Governor (s. 38). They may be disallowed within six months of his assent (s. 39),

or vetoed, or reserved (s. 38). Reserved Ordinances have no force unless assented to by the Governor-General within a year of reservation (s. 40). Certain classes of Ordinances may not be assented to unless they contain a clause suspending their operation until the Governor-General's pleasure is known (s. 41).

Finance.—Ordinance No. 2 is an Appropriation Ordinance.

Evidence.—Ordinance No. 2 makes a person accused of an indictable offence and the husband or wife of the accused a competent witness on his or her behalf, but not compellable *without his or her consent.* Such witness if called may be cross-examined like any other witness, but is not compellable to answer any question tending to criminate him or her with respect to any other matter than the offence for which he or she is being tried and on the trial whereof he or she tenders himself or herself as a witness.

Debtors.—Ordinance No. 3 gives a plaintiff in certain cases power to obtain an order for the arrest of a debtor on mesne process and for his detention until bail is given for an amount not exceeding that claimed in the action.[1] It also gives power to make an order in certain cases for the imprisonment of a judgment debtor for a term not exceeding six calendar months which does not operate as satisfaction of the debt.[2] The power arises when—

(1) the debt was fraudulently contracted;
(2) the judgment debtor conceals goods, chattels, valuable securities or other property;
(3) the judgment debtor has income, salary, or means to satisfy the judgment;
(4) the judgment debtor is about to remove any of his property or to leave British New Guinea with intent to evade payment of the judgment debt.[3]

Wild Birds.—Ordinance No. 4 amends the Wild Birds Protection Ordinance of 1894 by allowing the Administrator to issue special permits to destroy or capture birds protected by that Ordinance and to make conditions as to time within the periods to be in force, the places to which they are to apply, and the number of birds which may be taken or destroyed.

Wireless Telegraphy.—Ordinance No. 5 gives to the Administrator the privilege of wireless telegraphy in the possession and empowers him to grant licences.[4]

[1] Adapted from Queensland Common Law Process Act, 1867 (31 Vict. No. 4) ss. 48-50.
[2] Taken from Debtors Act, 1869 (32 & 33 Vict. c. 62 s. 5).
[3] Adapted from Queensland District Courts Act, 1867 (31 Vict. No. 30), ss. 92, 93.
[4] Cf. Fiji Ordinance No. 11 of 1903; Imperial Act, 1904 (4 Ed. VII. c. 24).

9. FIJI.

[*Contributed by* W. F. Craies, Esq.]

Ordinances passed—21.

Finance.—Ordinance No. 1 legalises payments made in 1904 in excess of the appropriations for that year.

Ordinance No. 19 is an Appropriation Ordinance.

Customs.—Ordinance No. 12 amends the Customs Duties Ordinance, 1898,[1] by exempting timber cut for cases for exporting fruit, articles imported as the property of and for the use of the Pacific Cable Board[2] if allowed by the Governor in Council.

Wharfage Duty.—Ordinance No. 6 amends the Wharfage Duty Ordinance, 1882,[3] by allowing the Governor to issue licences for private wharfs upon such conditions and on payment of such sums (not less than £5) as may be determined by the Governor in Council.

Legislative Council.—Ordinance No. 8 applies to 1905 the regulations made in 1904 for the registration of voters and the conduct of elections for the Legislative Council.

Supreme Court.—Ordinance No. 9 declares that the Supreme Court Rules, 1894, shall be deemed to have been duly and validly made and to have the full effect of law. The validation does not affect the authority of the Chief Justice to alter, amend, or revoke the said rules under any rule-making power conferred on him.

Native Lands.—Two Ordinances deal with native lands. (i) Ordinance No. 11[4] consolidates and amends the law of the Colony as to "native lands" —*i.e.* "lands which are neither Crown lands nor the subject of a Crown grant."

It does not apply to the island of Rotuma (s. 18). The native owners of such lands are known as the "mataquali," which includes any division or subdivision of the natives who have the customary right to occupy and use such lands (s. 2). Native lands are held by native owners in accordance with native usage as evidenced by custom and tradition (s. 3), and are cultivated, allotted, and dealt with by the native owners as among themselves in accordance with custom, but subject to regulations of the native Regulation Board approved by the Governor in Council. Disputes are settled by a court of law in accordance with the regulations or with native custom or usage ascertained as a matter of fact by evidence (s. 3).

[1] No. 1 of 1898: Journal, N.S. 1899, p. 517.

[2] Established under the Imperial Acts, 1 Ed. VII. c. 31, 2 Ed. VII. c. 26.

[3] No. 21 of 1882.

[4] It repeals (s. 19) the following Ordinances: No. 5 of 1882; No. 21 of 1892; No. 8 of 1893; No. 2 of 1895; No. 7 of 1896: Journal, O.S. Vol. II. p. 201; No. 7 of 1897: Journal N.S. 1899, p. 124; No. 20 of 1898: Journal, N.S. Vol. I. p. 517; and No. 9 of 1904: Journal, N.S. Vol. VII. p. 153.

The alienation or leasing of native lands to persons who are not natives is permissible by consent of the Governor in Council and subject to the following restrictions :

(*a*) Presentation of a report by the council of the district in which the lands lie ;

(*b*) Compliance with the Ordinance as to the form of grants and demises and the conditions contained in demises, which involve registration.

The purchase-money in the case of sale and the rents on leases are applied as directed by regulations of the Native Regulation Board (s. 17). Provision is made for the exchange of native lands for Crown lands (s. 15), and for dealing with lands where the mataquali ceases to exist or is reduced so as to be unable to allocate its lands (ss. 5, 6).

Disputes as to ownership are settled by a Native Land Commissioner (s. 16).

(ii) Ordinance No. 14 authorises the acquisition of native lands—to make roads, canals, bridges, and towing-paths, and in accordance with prescribed procedure for other Crown purposes.

Native Labour.—Ordinance No. 18 amends the Fijian Labour Ordinance, 1895 (No. 11), (i) by allowing the engagement under conditions of married men (s. 2) ; (ii) as to the mode of paying wages (s. 7) ; (iii) by allowing re-engagement (s. 9). There are other minor amendments.

Indian Immigration.—Ordinance No. 20 amends the Indian Immigration Ordinances, 1891 (No. 2) and 1895 (No. 12). It deals (*inter alia*) with fees on application or allotment of thirty or less immigrants (ss. 2, 3), with the return passages fund (s. 5).

Indian Hemp.—Ordinance No. 21 prohibits the importation of Indian hemp or any product or preparation therefrom, including gunjah,[1] bhang, chavas, or any article which in the opinion of the Chief Medical Officer of the Colony is capable of substitution therefor.

Obsolete Ordinances.—Ordinance No. 7 repeals as obsolete three earlier Ordinances—21 of 1876 (payment of Polynesian labourers), 18 of 1880 (industrial schools for natives), and 3 of 1900 (corporal punishment).[2]

Towns.—Ordinance No. 15 amends the Towns Ordinance (No. 16) of 1883 by allowing the limit of rate (fixed to 1*s.* in the pound in s. 47 of that Ordinance) to be exceeded to an extent not above 2*s.* in the pound by consent of the Governor in Council.

Constabulary.—Ordinance No. 16 regulates the police forces of the Colony.[3] It provides for two classes of police :

1. Village police for police duty in native villages enrolled by the Native Regulation Board.

2. Fiji constabulary (including a body generally known as Rural Police, whose position is legalised by s. 3).

[1] See the Gunjah Prohibition Ordinance, 1886 (No. 11).

[2] Journal, N.S. Vol. III. p. 332.

[3] It repeals (s. 33) the Police Ordinance, 1876 (No. 30), and the Armed Native Constabulary Ordinance, 1889 (No. 5).

Partnership and Limited Liability.—Ordinance No. 17 extends s. 207 of the Ordinance of 1878 (No. 7) on this subject to all British Colonies. It had applied only to Australian Colonies.

Crop Lien.—Ordinance No. 3 amends the Crop Lien Ordinance of 1904 (No. 12) by fixing the time for registration of agreements under that Ordinance (s. 4) and by excepting such agreements from the Bill of Sale Ordinance, 1879 (No. 8).

Mother-of-Pearl Fisheries.—Ordinance No. 5 permits the Governor to grant licences to fish for mother-of-pearl oysters and imposes penalties for fishing without a licence. The Ordinance does not come into effect until proclaimed.

Protection of Animals and Birds.—Ordinance No. 13 amends the Animals Protection Ordinance, 1895,[1] (i) by making (s. 2) the close season for native game or wild birds from September 1 to March 31; (ii) by empowering the Governor in Council to proclaim preserved areas within which no animal or bird may be taken or killed (s. 3); (iii) by empowering the Governor in Council to make orders protecting from slaughter or capture the birds or animals therein named (s. 5). The mynah bird is excepted from the protection given by the Ordinance (s. 4).

Punishment: Whipping.—Ordinance No. 4 authorises the whipping by order of a Court of a child who in the opinion of the Court is under fourteen years on conviction of any offence, and authorises the whipping by order of the Court of adult males convicted of manslaughter, attempt to murder, offences against 24 & 25 Vict. c. 100, ss. 11, 18, unlawfully cutting, stabbing, or wounding, or aggravated assault as defined in Ordinance No. 6 of 1896.[2]

Death and Fire Inquiries.—Ordinance No. 10 amends the Death and Fire Inquiry Ordinance, 1904,[3] by giving power to charge expenses on part of a district.

Weights and Measures.—Ordinance No. 2 amends the Weights and Measures Ordinance, 1877 (No. 21), by altering the postal address of the Colonial Treasury.

10. NEW ZEALAND.

[*Contributed by* Godfrey R. Benson, Esq.]

Public Acts passed—64; Local and Personal—44.

Supply.—Nos. 1, 4, 9 and 12 are Supply Acts.

Old Age Pensions (No. 2).—This Act raises the amount of pension to £26 a year, diminished by £1 for every complete £ of income, and £1

[1] No. 6, Journal, O.S. Vol. I. p. 88.

[2] Journal, O.S. Vol. II. p. 201. The Ordinance No. 3 of 1900 as to whipping is repealed by Ordinance No. 7 of 1905.

[3] No. 7 of 1904: Journal N.S. Vol. VII. p. 153.

for every £10 of net accumulated property. It provides further that "in computing the amount of the pension of a husband or wife the net capital value of all the accumulated property of each shall be deemed to be half the total net capital value of all the accumulated property of both." It also provides that wherever any part of the accumulated property of any claimant consists of property of any tenure used by him only for residence, £150 shall be deducted from his accumulated property. Here it will be noticed that a person owning a freehold is not regarded as better off than a person with a brief residue of a lease.

Road Boards Act Amendment (No. 3).—This Act relates to the procedure for passing "special orders."

Statutes Compilation Act Amendment (No. 5).

Criminal Code Amendment (No. 6).—All Courts are given power for excluding the public from trials and prohibiting reports where the interests of public morality require this.

Mutual Fire Insurance (No. 7).

Motor Registration (No. 8).—This Act, providing for the registration and marking of motors, is to apply only within boroughs and counties which adopt it.

Public Works Amendment (No. 10).

Stamp Act Amendment (No. 11).

Commissioners Act Amendment (No. 13).—This Act confers on judges who are appointed upon commissions of inquiry the powers, privileges, and immunities which are possessed by them in the exercise of their ordinary civil jurisdiction.

Offensive Publications (No. 14).—This Act provides that mere ignorance of the nature of the publication shall not be a defence to a person charged with taking part in the publication of indecent matter.

Coal-mines Act Compilation (No. 15).

Evidence (No. 16).—This is a consolidating and amending Act. The following departures from English precedent may be noticed: large powers are given to the Court to protect a witness from unnecessarily offensive cross-examination. Confessions made to a minister of religion in his professional capacity are not to be divulged without consent, and in civil proceedings communications to a physician or surgeon are similarly privileged except when the sanity of the patient or a question as to life assurance is in dispute; but communications made for any criminal purpose are not within either of these privileges. In criminal proceedings confessions induced by threats or promises are not to be rejected unless the Judge holds that the threat or promise was likely to induce a false statement. Law books relating to any country may be referred to as evidence of the law of that country.

Convicts' Forfeitures Act Amendment (No. 17).

Destitute Persons Act Amendment (No. 18).

Kaiapoi Native Reserve (No. 19).

Land-tax and Income-tax (No 20).—The rates of tax are: for land, 1*d.* in the £ of assessed capital value; for mortgages, ¾*d.* in the £ of assessed capital value; for income of companies of non-resident tax-payers, 1*s.* in the £; for other incomes, 6*d.* in the £ up to £1,000, 1*s.* in the £ for the excess, over £1,000.

Education Reserve (No. 21).—This Act is concerned with road-making and the like upon lands reserved for the maintenance of education.

Gerhard John Mueller Enabling (No. 22).

Waikaka Branch Railway (No. 23).—This Act authorises the construction of twelve additional miles of railway.

Taumutu Native Commonage (No. 24).

Timber and Flax Royalties (No. 25).—This Act provides for the payment to local authorities of one-half of the revenue received from the sale of timber and flax on Crown Lands.

Government Advance to Settlers Act Amendment (No. 26).

Canterbury Agricultural College Reserves (No. 27).

Native Townships Local Government (No. 28).—This Act provides for the election of a Council in any Native Township to which the Governor may by proclamation apply the Act. The Council will have the powers of a Borough Council in regard to streets, drains, waterworks, electric lighting works, public works generally, the suppression of nuisances, borrowing money for public works and the making and enforcing of by-laws.

Electoral (No. 29).—This is a consolidating and amending Act. The last consolidating Act on the subject was passed no longer ago than 1902, and the amendments made by the present Act are not of general interest. Among interesting points in the electoral law of New Zealand are the disqualification for membership of Parliament of any person who, *otherwise than as a member of a company*, is interested in the execution or enjoyment of any contract with Government, and the procedure by which a person absent from the district in which he is a voter may record his vote. The provision by which it is sought to secure that the register of voters shall be kept continuously up to date deserve the study of those interested in our own election law. As is well known, the electoral system of New Zealand is that of manhood and womanhood suffrage, and no voter may vote in more than one constituency. Standing provision is made for redistribution after every census. In such redistribution approximate equality in population of electoral districts is aimed at, except that the proportion of representatives to electors is higher for the rural than for the urban constituencies.

Public Trust Office Amendment (No. 30).—By this Act all trustees may, unless expressly prohibited, appoint the Public Trustee to be sole trustee in their place, provided that the Public Trustee himself consents.

Medical Practitioners Registration (No. 31).—The practitioners entitled to registration under this Act (which amends an Act of 1869) are: graduates

in medicine and surgery of the New Zealand University; persons registered or qualified for registration as medical practitioners in the United Kingdom; holders of a diploma given after five years' study in medicine and surgery "by a university in any British possession"; holders of a similar diploma, so given, by any other university which in the opinion of the Governor in Council is equal in status to that of New Zealand."

Industrial Conciliation and Arbitration Acts Compilation (No. 32).

Criminal Code Amendment (No. 2), (No. 33).—By this Act words likely to injure the reputation of any person or to injure him in his trade or profession are punishable as an offence, if spoken at a public meeting of twenty or more persons; but the consent of a judge or magistrate is necessary before a prosecution can be begun.

Hutt Railway and Road Improvement (No. 34).

Victoria College (No. 35).—This is a consolidating Act.

Property Law (No. 36).—This is an Act to "consolidate extend and simplify" the law relating to property. Its most interesting provisions have been in force for many years. They include not only provisions from the English Conveyancing Acts, but a further very drastic simplification of conveyancing, in which the repeal of the Statute of Uses and the abolition of so much of the conveyancer's art as is based upon that Statute form the most striking feature.

Aid to Public Works and Land Settlement (No. 37).—This Act grants £450,000 for new railway construction, £75,000 for rolling stock for existing lines, £400,000 for development of back blocks by roads, etc., £25,000 for development of the gold fields in like manner, and £75,000 for telegraph extension.

Taranaki Scholarships (No. 38).

Mining Acts Compilation (No. 39).

Bills of Exchange Act Amendment (No. 40).—By this Act branch banks are for most purposes of the principal Act of 1883 to be deemed to be independent banks. All bankers who have credited a customer with the amount of a crossed cheque before collection are protected.

Australian and New Zealand Naval Defence (No. 41).—By this Act the agreement between Australia and New Zealand sanctioned by the Act of 1903 may be varied by joint consent of the parties, provided that the strength of the naval force is not diminished nor the sum contributed by New Zealand increased.

Workers' Dwellings (No. 42).—By this Act the Governor may set apart portions of any Crown land or of land acquired under the Land for Settlements Consolidation Act, 1900, for the purpose of providing dwellings for landless "workers." On land so set apart the Minister for Labour may erect workers' dwellings. These are to be let by the Land Board, either on weekly tenancy at a rent at the rate of 5 per cent. per annum on the capital value in addition to a sum for fire insurance and rates, or on renewable leases for fifty years at

the like rent. In the latter case the lessee may elect to acquire the freehold, either by payment of the original capital value after the lapse of not less than twenty-five years, or by monthly payments (in addition to the sum for fire insurance and rates) at the rate of 8 per cent. per annum for thirty-two years or 6½ per cent. per annum for forty-one years, or by means of an insurance for his life or a term of years. The management of workers' dwellings thus erected (but not the power to erect them) may be transferred to a local authority. No disposition whatever can be made of the lease or freehold of such a worker's dwelling without the consent of the Land Board.

Shops and Offices Act Amendment (No. 43).—This Act fixes hours for each of a number of kinds of shop specified therein after which no shop assistant may be employed in or about the shop, and hours for all shops before which no shop assistant may be so employed. The former hours are different on the weekly statutory half-holiday, on one longer day allowed in the week, and on the remaining days of the week.

Maori Land Settlement (No. 44).

Education Act Amendment (No. 45).—This Act (*inter alia*) alters the scale upon which the numbers and salaries of the teachers in schools are fixed.

Horowhenua Lake (No. 46).—This Act makes the lake concerned a place of public resort for boating, while preserving the native owners' right of fishing, and prohibiting the shooting of birds on the lake.

Sentry Hill—New Plymouth Railway Deviation (No. 47).

Queenstown Reserves (No. 48).

New Zealand International Exhibition, Empowering (No. 49).—This Act sets apart land and constitutes a Commission to manage the exhibition to be opened at Christchurch on November 1, 1906.

Workers' Compensation for Accidents (No. 50).—This Act fixes the minimum compensation for total *or partial* disablement at £1 a week when the worker's previous remuneration was not less than 30*s.* a week. It also empowers the Arbitration Court to order, or the parties to agree to, compensation by a lump sum instead of weekly payments.

Epuni Leases Surrender (No. 51).

Government Railways Amendment (No. 52).

Public Works Acts Compilation (No. 53).

Teachers' Superannuation (No. 54).—This Act establishes a superannuation fund for all future teachers, for all other persons in future taken into employment in the Education service who may wish to contribute to the fund, and for all persons already permanently employed in the Education service who may choose to contribute to it. The Government makes an initial contribution of £5,000 to the fund and guarantees the sufficiency of the fund for the future; for the rest the fund is made up of contributions deducted from the contributors' salaries and ranging from 5 per cent. of such salary when

the contributor begins under the age of thirty to 10 per cent. when the contributor begins over the age of fifty. The contribution ceases for a male contributor when he has contributed for forty years, and for a female contributor when she has contributed for thirty-five years. Every male contributor may retire at the age of sixty and must retire at the age of sixty-five. Every female contributor may retire at the age of fifty and must retire at the age of sixty. The allowance received on retirement is an annual payment of $\frac{1}{60}$ of the total amount received by the contributor in salary while he has been a contributor, with an addition in the case of those who were in the service before the fund was established. On the death of a contributor not leaving a widow, an amount equal to the sum of his contributions (without interest) less the sum of any payments of retiring allowance made to him is payable to his personal representative. If he leaves a widow, she is to receive till death or re-marriage a yearly allowance of not less than the annuity which the last-mentioned amount would produce, plus £18, and upon her death or re-marriage the excess (if any) of the said amount over the sum of the said annuity already paid to her becomes payable to her personal representative or herself. In addition 5*s*. a week is payable for each child of a deceased contributor until such child attains the age of fourteen. A contributor retiring from the service because of medical unfitness is to get back the amount of his contributions without interest, and, if his service has exceeded fifteen years a further sum, to be determined by the Board which administers the fund.

Mining Act Amendment (No. 55).—The Act (*inter alia*) authorises the Government to advance money for the carrying on of pioneer mining. It also establishes a system of licensing gold-dealers, and forbids the sale of gold except where either the buyer or the seller is a licence-holder.

Industrial Conciliation and Arbitration Amendment (No. 56).—Among the provisions of this Act is one which makes the causing of or taking part in a strike or lock-out or any movement intended to produce a strike or lock-out an offence punishable with a fine not exceeding, in the case of a union or association or of an individual employer, £100, and, in the case of an individual worker, £10.

Workers' Dwellings Act Amendment (No. 57).—This Act brings unneeded portions of the lands reserved for defence within the scope of the principal Act, No. 42 above.

Agricultural Implement Manufacture, Importation, and Sale (No. 58).—This Act is intended to deal with dumping in the trade concerned. The Commissioner of Trade and Customs is empowered, upon the recommendation of a board (on which the farming interest is represented), to grant such a bounty, not exceeding 33 per cent., as he may think necessary to enable home manufacturers of agricultural implements to meet "competition on unfair lines," carried on by importers. He is also empowered to refund to manufacturers duty paid on materials used by them, the term "materials"

including such parts of instruments as cannot advantageously be manufactured in New Zealand. For the purpose of the Act a list is to be compiled showing the current prices of implements at the passing of the Act, and should the New Zealand manufacturers at any time agree to lower their prices as much as 20 per cent. below the listed prices, the Commissioner (upon the recommendation of the Board) may grant a bounty as in the case of unfair competition. Implements of British manufacture are treated by the Act as if they were manufactured in New Zealand. Does "of British manufacture" mean manufactured in the United Kingdom only, or manufactured anywhere within the King's dominions?

Ellesmere Land Drainage (No. 59).

Factories Act Amendment (No. 60).—This Act establishes a minimum wage for persons employed in factories. In the case of a person of twenty years or more of age who has been employed four years in the trade the minimum (after one year at 17*s.*) is 20*s.* a week.

Civil Service Classification (No. 61).—The Minister in charge of each department is required by this Act to submit to Parliament for its approval a scheme classifying the civil servants under him, and fixing their rates of pay and increments of pay. The increments of pay prescribed for each civil servant by the scheme (if approved) will only take effect upon a certificate of his good conduct given by the permanent head of his department, but when this certificate is withheld there is to be an appeal to a board constituted by the Act and representative of the service.

Appropriation (No. 62).

Shipping and Seamen Act Amendment (No. 63).—This Act (*inter alia*) penalises the fraudulent employment of a duly certified officer for the purpose only of enabling the ship to clear and not for the purpose of the whole voyage.

Marriage Validation (No. 64).—By this Act marriages with a deceased wife's niece or a deceased husband's nephew, contracted *prior to the Act*, are to be deemed to have been valid.

V. SOUTH AFRICA.

I. CAPE COLONY.

[*Contributed by* VICTOR SAMPSON, ESQ., *Attorney-General.*]

The legislation of the past session of Parliament comprises in all 42 measures.

Control and Audit (No. 14).—This Act consolidates and amends the law relating to the control and audit of public accounts and the protection and recovery of public property. It repeals Acts No. 30 of 1875, 32 of 1888,

19 of 1899 and a portion of s. 80 of the Constitution Ordinance. Generally the principles upon which the Act is drafted are identical with those upon which the Acts of the Commonwealth and New South Wales are based.

Revenue and Expenditure (Nos. 9, 1).—The Income Tax is reimposed by Act No. 9, and Act No. 1 ratifies the Customs Union Convention and Protocols entered into at Pietermaritzburg on March 24 1906, the parties to which are the Cape, Natal, Orange River Colony, Transvaal, and Southern Rhodesia. It will be observed that there is a slight increase in the duties on the "necessaries of life." Rebate is granted upon goods the growth, produce, or manufacture of the United Kingdom or a reciprocating British Colony.

The following are examples:

Article.	Duty.	Rebate.
Butter (per lb.)	2¼*d.*	¼*d.*
Cocoa (per lb.)	2*d.*	½*d.*
Confectionery (per lb.)	2½*d.*	¼*d.*
Wheat (100 lb.)	1*s.* 2*d.*	2*d.*
„ ground (100 lb.)	2*s.* 6*d.*	3*d.*
Barley (100 lb.)	2*s.*	2*d.*
„ ground (100 lb.)	2*s.* 9*d.*	3*d.*
Milk, condensed full cream (100 lb.)	5*s.* 2*d.*	1*s.*
Potatoes (100 lb.)	2*s.*	2*d.*

On animals imported for slaughter the following duties are charged:

Cattle—£1 10*s.* each; sheep 5*s.* each. Upon meat and lard is charged 1¼*d.* per lb., and upon butter 2¼*d.* per lb. The duty on animals imported for slaughter and meat cannot be suspended by the Governor without the consent of both Houses of Parliament. The Act prohibits the importation of prison or penitentiary-made goods. The importation of opium, its extracts, poppies, and preparation of poppies by other than doctors and chemists is penalised. The object is to prevent the importation of opium by the Chinese and others for smoking purposes.

S. 22 of the Act penalises the importation of indecent books, pictures, etc.

Appropriation:

Acts Nos. 4 and 22 apply towards the service of the year ending June 30, 1907, the sum of £7,233,191.

Act No. 2 (The Additional Appropriation Act, 1905–6) applies a sum of £336,683 for the service of the year ending June 30, 1906.

Act No. 31 (Unauthorised Expenditure Act, 1906) applies £65,362 to meet unauthorised expenditure during the financial year ending June 30, 1905.

Finance: Loans.—Act No. 37 authorises the raising of £1,580,600 for the purposes stated, and the conversion of the Treasury 4 per cent. Bills

amounting to £2,000,000 issued in London in April, 1904, into Cape of Good Hope Consolidated Stock (s. 13).

Act No. 38 authorises the raising of £720,723 for the railway works mentioned.

Administration of Justice:

The Rebellion.—Act No. 29 completely reinstates those convicted of Treason during the late war and rebellion, and who had been deprived of certain rights of citizenship; and henceforth no prosecution will be instituted in connection with any act committed by any person in his capacity as a rebel in arms (ss. 8, 9, 10).

Supreme Court (No. 29).—The Supreme Court may now sit in three instead of only two divisions (s. 1).

High Court, Griqualand (No. 29).—After July 1, 1907, the High Court of Griqualand will consist of one Judge only, and the Judge-President will retire on full pension.

The Transkei (No. 29).—S. 11 empowers the Chief Magistrate of the Transkei Native Territories to hear and determine suits for divorce and judicial separation.

First Offenders (No. 11) is a continuation of the legislation of last session the object of which is the ultimate prevention of crime and reformation of convicts. The Act empowers the Court to "bind over a first offender" on the ground of youth, character, and antecedents, the trivial nature of the charge, or the extenuating attendant circumstances. The Court is further empowered to discharge a first offender with a reprimand without imposing any sentence of fine or imprisonment. These powers, however, are not exercisable when the crime charged is a capital one.

Lashes.—Act No. 19 takes away the arbitrary power of magistrates visiting convicts and prisoners to sentence prisoners to lashes not exceeding fifteen. In future all sentences to lashes—independently of their number—must be confirmed by a Judge on review.

The following Acts are of peculiar interest to others than residents within the Colony:

Immigration.—Act No. 30 amends our Immigration Law, and repeals the Statute of 1902. The following classes of persons are now prohibited—unless exempted from the application of the Act—from entering the Colony by land or sea: (*a*) persons unable through deficient education to write out in a European language an application for admission into the Colony. In the interpretation of the words "European language" some doubt was experienced under the repealed Act as to the inclusion of "Yiddish." This Act removes the doubt by specifically accepting Yiddish as a European language; (*b*) persons not in possession of visible means of support, or likely to become a public charge; (*c*) persons deemed by the Minister (*i.e.* the Colonial Secretary) to be undesirable by reason of their having been convicted of any infamous crime, such as murder, rape, theft, fraud, perjury,

forgery; (*d*) lunatics; (*e*) prostitutes and those living wholly or in part on their earnings; (*f*) persons deemed by the Minister to be undesirable by reason of information received from a Secretary of State, Colonial Minister, or through diplomatic channels.

The Act wholly exempts the following persons from its application: (*a*) persons born in South Africa; (*b*) His Majesty's naval and military forces; (*c*) officers and crew of foreign public ships; (*d*) Consuls and their families; (*e*) wives and children under sixteen of persons not prohibited.

Persons of European birth "domiciled" in South Africa are partly exempted: they may return unless they have been convicted of any serious crime, or are prostitutes or persons living on the proceeds of prostitution.

Ex-War-Volunteers are relieved from the "means" and "education" test, but are subjected to the others—(*c*) (*d*) and (*f*).

An Asiatic resident in the Colony is allowed to depart and return if he absents himself under a Minister's permit. European agricultural or domestic servants, skilled artisans, mechanics, workmen, miners, are wholly exempted if they immigrate under a scheme approved by the Government, and possess certificates granted by the Agent-General in England, or the officers appointed by the Governor elsewhere, certifying that they are actually engaged for immediate and desirable service in the Colony.

Persons flying from political or religious persecution are allowed to enter the Colony though not possessed of visible means of support; but in other respects they must satisfy the tests (*a*) (*c*) (*d*) and (*f*).

The main reforms attained are therefore (1) the exemption from all tests of persons born in South Africa; (2) the confining of the "domicile" exemption to Europeans who are not criminals or connected with the social evil; (3) confining the "war service" exemption to volunteers, and to such as are of good character.

Under the repealed Act certain undesirable foreigners endeavoured to enter and re-enter the Colony. The Crown asserted the prerogative of prohibiting any "foreigners" from entering the Colony. The prerogative was upheld by the Court, and it was held—in the various cases—that (*a*) the Act did not affect the prerogative of the Crown with regard to the exclusion of "aliens;" (*b*) that an "alien" could be excluded even though he had acquired a domicile in the Colony. The exclusion was not, in any of the cases, arbitrary. The persons excluded were undesirable, as being closely connected with the trade of prostitution. The Act must therefore be regarded as applying to immigration generally, and it will not entitle an "alien" to enter the Colony against the wishes of the Executive.

Under the repealed Act no penalty was imposed upon an immigrant unlawfully entering the Colony; the new Act attaches a penalty of £50 or three months, in addition to liability to be sent away at any time.

The master of a ship who "knowingly, directly, or indirectly allows any immigrant to leave his ship, whereby such immigrant contravenes" the Act, and the owners are rendered jointly and severally liable to a penalty of £100, and to a further penalty of £20 for each immigrant landed exceeding five.

The Governor has the following powers:

(1) To approve of schemes for the immigration of servants, artisans, and skilled workmen; but the Act clearly indicates the intention that no scheme should be approved unless the Governor is satisfied that there is an insufficient supply of the class of labour in the Colony at an adequate remuneration.

(2) To issue regulations in respect of the following matters: (*a*) the prevention of unlawful immigration; (*b*) the expulsion of prohibited immigrants; (*c*) the temporary custody and control of prohibited persons pending their expulsion; (*d*) the reception, etc., of persons immigrating under approved schemes; (*e*) the appointment of officers to carry out the Regulations; (*f*) the issue of certificates and other documents, and the payment of fees therefor; (*g*) the passage of prohibited immigrants through the Colony, or for their temporary residence, with power to require security to ensure the "time" conditions being complied with.

Chinese Immigration (No. 15).—This Act enables Chinamen resident in the Colony who are not British subjects to temporarily absent themselves from the Colony. Under the Act of 1904 an "alien" Chinaman leaving the Colony could not return. This constituted an undoubted hardship, especially when Chinamen had property or families living abroad.

Marriage (No. 11).—This Act provides that, in cases in which banns of marriage "shall have been lawfully published in different places, both of which shall be in this Colony, or one of which shall be in this Colony and the other in another country, or each of which shall be in another country or other countries respectively," it shall be lawful for the officiating Minister in this Colony, upon production to him of the certificates of the due publication of the banns, to solemnise the marriage between the parties whose banns have been so duly published notwithstanding anything to the contrary in the Marriage Order in Council of September 7, 1838.

Companies (No. 8).—This enables a colonial company transacting business outside the Colony to issue duplicate seals to be used abroad by its agent, duly authorised thereto in writing, under the Company's Common Seal. The powers cannot, however, be exercised if not authorised by the Articles, or a special resolution of the company.

Public Health (No. 42).—*Wine and Brandy.* From the public health point of view this Act and the Slaughter-Houses Act are perhaps the most important Acts of the session. The object of the Act is to restrict the supply of wines and spirits, as far as possible, to the pure article. In the case of "wines" the Act defines what alone shall be regarded as "pure" or

"natural" wines; and no wine may, in future, be imported or manufactured for sale within the Colony as pure or natural wine which does not satisfy the requirements of the Act. The Act goes further in prohibiting the sale as such of any "wine" which is not wine properly so called. An article sold as "wine" must be the product solely of the alcoholic fermentation of the juice (must) of fresh grapes.

Sweet wine must be "wine" sweetened only by the sugar derived from the juice (must) of the fresh grape from which it is made.

"Sparkling wine" must be "wine" surcharged with carbonic acid gas to which cane sugar and "pure wine" spirit (the rectified distillate resulting from the distillation solely of wine or must) may or may not have been added.

The description "champagne" must not be applied to any wine in which the excess of carbonic acid gas results from direct admixture (s. 13).

No "wine" may be sold as such if any water has been added to it (s. 8) or to which has been added:

Cane sugar in quantities exceeding eight ounces per gallon; salicylic acid exceeding four ounces per 127 gallons; sulphurous oxide exceeding, in "dry" wines, fourteen grains of free and combined sulphurous oxide, or one and a half grains of free sulphurous oxide per gallon; and in the case of other wines, exceeding twenty-five grains of the free and combined, and two and a half grains of the free per gallon. ("Dry" wine is defined as wine in which *all* the sugar derived from the juice or must is completely fermented).

Wine may not be sold as "*pure* wine," or "*natural* wine," or "pure natural wine," or "natural dry wine," or "pure natural dry wine," or "pure natural sweet wine" unless, in addition to being "wine" properly so called and satisfying the above-mentioned requirements as to "wine," it is also free from what the Act condemns as "foreign substances." On this subject the Act (s. 7) provides as follows:

(7) The terms "foreign substance" used in this Act (*a*) Shall include the following, and such others as the Governor in Council, on recommendation of the Administering Officer, may by regulation from time to time declare and publish in the Government *Gazette* as foreign substances, for the purposes of this section, viz.: Ethers, essential oils, bitter almond, cherry laurel, flavouring substances, alkaloidal substances, compounds of barium, fluorine, magnesium, strontium, bismuth, arsenic, lead, zinc, aluminium, tin, copper, boron, derivatives of naphthol (abrastol, etc.), sulphuric acid, formalin or formaldehyde, salicylic acid, or other antiseptics (except sulphurous oxide as provided for in s. 8), glycerine, saccharine, dulcine, sucrovin, starch sugar, invert sugar, cane sugar (except in the case of champagne), impure spirit containing more than one per mille of fusel oil, organic or mineral colouring matters, gums, and any mixture containing any of these substances; but (*b*) Shall not include the following and such others as the Governor in

Council, on the recommendation of the Administering Officer, may by regulation from time to time declare and publish in the Government *Gazette*: (1) Yeast or leaven. (2) Substances such as isinglass, gelatin, eggs, albumen, spanish clay, kaolin, or tannin for the purpose of clarification. (3) Common salt, provided that the total amount of chlorine in the wine, calculated as sodium chloride, does not exceed half a gramme per litre, or thirty-five grains per gallon. (4) Sulphate of lime, metabisulphate of potassium or sulphurous oxide, provided that the total amount of sulphuric oxide calculated as potassium sulphate does not exceed two grammes per litre or one hundred and forty grains per gallon. (5) Tartaric acid. (6) Natural products of grape-vine leaves or flowers. (7) Pure wine spirit, pure wine brandy or spirit distilled from sound wine at not less than thirty-eight degrees over proof, for the purpose of increasing the alcoholic strength to the extent not exceeding twenty-eight per centum of proof spirit, or sixteen per centum of alcohol by volume in the case of dry wines, or thirty-five per centum of proof spirit or twenty per centum of alcohol by volume in the case of sherries, ports, and sweet wines, or forty-three per centum of proof spirit, or twenty-five per centum of alcohol in the case of imported wines, alcohol in either case being absolute alcohol of specified gravity 0·7938 and measured at the temperature of sixty degrees of Fahrenheit's thermometer.

Brandy and Whisky.—No article may be sold as brandy which is not the distillate resulting from the distillation of (*a*) wine or must; (*b*) must and grape-husks; (*c*) grape-husks and water.

No article may be sold as whisky which is not the spirituous liquor derived from grain by fermentation and distillation, the volatile constituents of which are derived solely from that material.

The strength of brandy and whisky may be reduced by means of pure water to not below 25° under proof.

An article sold as "pure wine brandy" must be distilled from "pure wine," or "must"; "pure grape brandy" must be distilled from "wine," or "must with grape-husks"; "dop brandy" from "grape-husks and water," and, in each case, from these substances *solely*.

"Malt whisky" must be derived solely from malt, and "blended whisky" must contain not less than 25 per cent. of malt whisky.

All colonial brandy must be sold in vessels with labels stating clearly whether the brandy is "pure wine brandy," "pure grape brandy," or "dop brandy."

Every bottle of wine, brandy, whisky, and liqueur must be labelled with the name and address of the retailer, and if bottled in the Colony with the name and address of the bottler as well, and if imported with the name and address of the original importer.

Existing stocks are to be inspected and a reasonable time allowed for their disposal.

The Act will apply to all future importation of wines and spirits, and

all imported wines and spirits will be subjected to the provisions of the Act.

Slaughter-houses (No. 27).—The object of this Act is to prohibit, as far as possible, the slaughter of cattle and other animals for human consumption in places other than public slaughter-houses properly regulated from the point of view of public health. The necessary powers are conferred on local authorities, and on failure to exercise them the Government is empowered to intervene in certain defined and populous areas, and provide the necessary accommodation at the expense of the authority.

Local authorities are empowered to make regulations—with, of course, the Governor's assent—prohibiting the sale of meat brought within the area that has been condemned by their inspectors.

Servants' Registry Offices (No. 20).—This Act is aimed against undesirable registry offices, and also against undesirable domestic servants.

In future no person may keep a servants' registry office unless licensed by the resident magistrate; and licences are only to be granted applicants who produce certificates as to good character, signed by a Justice of the Peace—to whom applicant is personally known—and six local ratepayers. In spite of the production of such a certificate, the magistrate may make further inquiry and call witnesses; and the Act intimates clearly that he should not grant the licence unless satisfied, not only as to the applicant's character, but also as to the fitness of the proposed premises upon which alone the business may be carried on.

A licence may be transferred, but similar tests are applied to the transferee, and the business cannot be transferred to new premises.

The Act requires the office-keeper (*a*) to keep a book recording names of all persons charged or paying fees, with particulars of the amounts and dates; (*b*) to keep a book styled "Book of Engagements," recording in each case the following particulars: Name and address of servant; name and address of applicant applying for servant; name of last employer and last known address; date of application; date of engagement; address and occupation; nature of engagement; rate of wages; terms of engagement; signature of office keeper; (*c*) to file—available for one year—originals of all letters relating to hirings; (*d*) to keep conspicuously posted the scale of charges; (*e*) to charge only in accordance with the posted scale.

A maximum scale of fees *may* be prescribed by the Governor by Regulation.

The Act includes, among servants, governesses and lady-helps, and any person hired in any capacity, whether domestic, agricultural, pastoral, mechanical, or otherwise.

The Act does not apply to institutions not carried on for the purpose of gain.

Servants are required by the Act, when seeking hire through an office, to truly state: (1) Name; (2) address; (3) name and address of last

employer, and any false information is punishable by a fine not exceeding £5, or imprisonment up to fourteen days.

The magistrate is required to keep a register of all licences and transfers.

The police are empowered to inspect the books, and an employer may inspect entries which concern him.

Persons keeping registry offices without a licence are punishable by a fine not exceeding £5, and the like penalty is imposed on a licensed holder for any contravention of the Act.

General Dealers (No. 35).—Under our general law a person cannot carry on the trade of a general dealer unless he has taken out a general dealer's licence, which costs £3 annually. Latterly there has grown up in the Colony a class of tradesmen—recruited from undesirable immigrants—who have in a great measure constituted a menace to the public health. They set up small wood or iron structures, and sell goods on premises which are practically their habitations. The object of this Act is to confine the exercise of the trade to persons who have the necessary accommodation, and are otherwise capable of catering for the public with more or less safety, as regards the public health. The Act will confine, in future, the issue of licences to persons who are approved of by the local authorities within whose jurisdictions respectively they desire to do business; and if a majority of two-thirds of the whole of the members of any local authority objects to any applicant, he will not be allowed to carry on the business within the jurisdiction of the local authority, or within three miles of its boundary.

The Act is not retrospective in so far as the holders of existing licences are concerned, and as long as they do business within the same areas.

Similar provisions, more or less, apply to hawkers.

The Act further penalises Sunday trading and shebeening by a possible cancellation of the general dealer's licence held, and disqualification to hold another for one year.

An important reform in the general law is attained by enabling the local authority to control the hours of "keeping open." Their regulations may apply generally, or be restricted to particular classes of shops. In specifically prohibiting the keeping open on Sundays, and other closing days, any shop in which a general dealer's goods are kept for sale, the Act prevents general dealers' shops being open on the pretext that refreshments are being sold.

The fee for a hawker's licence is fixed at £2 in municipalities and villages, and £3 elsewhere.

Education (No. 25).—This Act amends the Act of last year with regard to elections of school-boards, in more clearly defining the persons entitled to vote. No person may vote unless his name appears on the Divisional Council Voters' Roll. In this way the difficulty experienced in the past in determining what constitutes a Municipal Divisional Council "rate-payer" is overcome.

The Act extends the franchise to women who are occupiers of immovable

property, and certain elections held under the amended Act which could, but have not been, judicially set aside on the ground that certain persons were excluded from voting, are validated.

Partnerships Limited Liability (No. 12).—Act No. 24 of 1861—which excludes from its operation joint-stock companies and banks—provides for the formation of "limited" partnerships consisting of—

(1) General partners, liable jointly and severally, authorised only to transact business and sign for the partnership and bind the same; and

(2) Special partners, each contributing to the common stock in actual cash a specific sum of money, nor liable, generally, for partnership debts beyond the amount so paid in.

This new No. 12 Act requires that all such partnerships shall bear after their name the word "Registered" in order that the limitation of the special partners may be made public, and creditors may be thereby protected.

Trespassing (No. 23).—S. 1 of the Act makes it penal for any person to "trespass or be within any enclosed camp, kraal, or land without the permission of the owner or lessee."

S. 3 penalises the "visiting" of servants on the master's premises without his consent, in cases in which the master has generally prohibited visiting. The Governor may apply these provisions to lands appropriated for railway purposes.

Wild Animals.—The Act declares that all game or wild animals preserved or enclosed by any owner or lessee within any camp or kraal shall be deemed to be the property of such owner or lessee *as long as they remain in such enclosure.*

S. 6 provides a penalty for cutting or damaging wire or other fences. Prosecutors may withdraw any charge made under this Act.

Irrigation (No. 32).—This Act is regarded by many as one of the most important of the session. It consolidates and amends the somewhat complicated laws relating to irrigation and the utilisation of streams. Its provisions are of interest mainly to the inhabitants of those countries which, like South Africa, have an insufficient number of *perennial* streams, and where agriculture must to a great extent depend upon water stored during the rainy seasons. The Act provides for the establishment of River Districts and Boards, and Irrigation Districts and Boards. The object of the former is a combined system of control by the riparian owners of the streams in the district, and the distribution of the water. In Irrigation Districts the Boards are intended to construct irrigation works and control their user and the distribution of the water.

The Act further provides for the constitution of Water Courts for the purpose of hearing and determining all disputes in connection with the use and appropriation of water, recourse to which is, in the first instance, compulsory. An appeal lies to the Supreme Court; but the parties may agree that the Water Court's decision shall be final.

Animals Diseases (No. 16).—This Act confers upon the Government further powers in order to combat the diseases of lung-sickness, glanders, farcy, and tuberculosis.

Ordnance (No. 7).—This Act substitutes the General or other officer commanding in the Colony for the Commanding Royal Engineer for the purpose of dealing with ordnance property under Act No. 2 of 1858.

Elliot Title-deeds (No. 40).—This Act repeals certain conditions in the title-deeds of erven in villages in the District of Elliot. It also gives effect to certain recommendations of the Tembuland Commission, 1882-3.

Outspans (No. 13).—This Act empowers the Governor to reserve Crown lands for use as public outspans; to reserve, with the consent of the Divisional Council, such portions of public outspans as may be required for public purposes, and to consent to the leasing, by Divisional Councils, of outspans in exchange for lands more suitable for outspan purposes.

Private Bills (No. 3).—This Act empowers the President of the Legislative Council and the Speaker to appoint a Civil Servant to be the depositary and custodian of all documents required to be deposited in connection with Private Bills.

Local Authorities Railway Contribution (No. 33).—This Act enables local authorities to make contributions to the Government in aid of the construction or maintenance of Government Railways or in consideration of the furnishing of special facilities. The idea is, mainly, to allow local authorities who will be the main gainers by the construction of a line to levy special rates in order to enable the Government to work the line with as little loss as possible.

Railway Construction (No. 34).—This Act empowers the construction of a number of lines of railway—set out in the Schedules to the Act. It empowers the Governor to expropriate the line from Mafeking to Burman's Drift Siding, and to enter into a Convention with Natal for the construction by the Natal Government of a line from Riverside to the Natal Border with the right of expropriation by the Cape Government.

Employers' Liability (No. 40).—This Act provides that, in assessing the amount of compensation to be awarded to workmen or their dependents, no account is to be taken of moneys derivable from any Benefit Society, Life Assurance Company, or Savings Bank. When, however, the employer has contributed, his rights under the principal Act—No. 40 of 1905—are saved.

The following are the private Acts of the Session:

Miscellaneous Acts:

No. 5.—Kimberley Water works Company—enlarging the Company's powers.

No. 6.—King William's Town Water Supply—conferring further powers on the Council.

No. 17.—East London and Mossel Bay Harbour Works—empowering

the Governor to raise a loan of £43,000—£37,750 for East London and £5,250 for Mossel Bay.

No. 21.—Reconstituting the South African Association for the Administration and Settlement of Estates.

No. 24.—Authorising the Municipality of Durbanville to execute a contract of guarantee with the Government in connection with a certain line of railway from Belleville to Durbanville.

No. 36.—Authorising the issue of a land title to a Mr. Adkins in respect of certain land he had acquired by prescription.

No. 18.—This Act authorises the Municipality of Walmer to execute a contract of guarantee with the Government in connection with construction of a railway from the present line to the town.

2. NATAL.

[*Contributed by* EDWARD MANSON, ESQ.]

Acts passed—41.

A remarkable feature of the legislation of the Colony this year is the evidence it affords of the growing activity in railway construction. No less than six Acts deal with this subject.

Fires from Railway Engines (No. 3).—Given damages by fire occasioned by a railway engine, it is no longer incumbent on the plaintiff to prove negligence by the Railway Department. Negligence is to be presumed.

Health (No. 8).—The Government bacteriologist is to be an *ex-officio* member of the Board of Health.

Animals (No. 12).—A pound-keeper is to have a fee of sixpence a day for herding pigs.

Detention of Prisoners (No. 15).—Criminals sentenced in any South African Colony may, under this Act, be imprisoned in Natal.

Naturalisation of Aliens (No. 18).—This Act is designed to facilitate the naturalisation in Natal of aliens of European birth or descent. The conditions are, briefly: (1) five years' residence in Natal, or one year in Natal, and four in some other part of His Majesty's dominions, and (2) a magistrate's certificate of good repute.

The naturalised alien is to subscribe a declaration of allegiance.

Every married woman is to be deemed a subject of the State of which her husband is for the time being a subject.

The Act further provides for a half-yearly return being published of all persons to whom certificates of naturalisation are granted under the Act. A fee of £1 is payable for a certificate.

Licences (No. 26).—A licence is required for keeping a native eating-house outside the limits of a municipal borough or of a township constituted under Law No. 11, 1881 (£5).

A hawker or itinerant trader's licence is to be confined to the limits of the magisterial division in which it was granted.

Liquor Laws (No. 27).—The words "intoxicating liquor" are to include "isityimiyana," whether made from treacle, sugar, or other ingredients (the pronunciation of this word ought to be a guarantee of sobriety.) "Isityimiyana" may be searched for and seized by the police, on any premises, huts, or dwellings where there is a suspicion that it is made.

Natal Institute of Land Surveyors (No. 28).—The objects of this society are the promotion and improvement of land surveying and maintaining the credit of the profession. This Act incorporates the society. Every member is liable for a sum of £10, but no more, in addition to the annual subscription.

The Council is given power to frame by-laws.

Succession Duty (No. 35).—This Act regulates the rates of duties to be charged on successions to any property, other than immovable property, outside the Colony. A lineal descendant or ancestor is to pay one per cent., a brother or sister two per cent., a stranger in blood five per cent. Estates of less than £100 are exempt.

Closing of Shops (No. 36).—All shops—which term has a wide definition—are to be closed: on Sundays and public holidays, the whole day; on Monday, Tuesday, Wednesday, and Thursday, at 5.30 in the afternoon; on Fridays at 10 o'clock in the evening; on Saturday at 2 o'clock in the afternoon. Hawkers and pedlars are not to ply while the shops are closed.

The following are exempted: Restaurants; fresh milk, fruit, flower, and vegetable shops; tobacconists; bakers and confectioners; undertakers; newsvendors and railway bookstalls; retail bicycle shops; butchers, poulterers, and fishmongers. There are special hours for chemists and hairdressers. Shopkeepers are liable for contravention of the Act, whether present or cognisant of the contravention or not. Penalty, £5.

Poll Tax (No. 38).—This Act imposes an annual Poll Tax of £1 sterling on every male person of the age of eighteen and upwards. The burden of proving nonage rests on the person claiming exemption.

Natives liable to Hut Tax are exempt from Poll Tax; also natives working in the Colony but domiciled elsewhere; also any person proving himself through poverty unable to pay; and any person merely passing through the country.

Indian Immigration (No. 39).—No person is to employ, whether as a servant or in any other capacity, any Indian immigrant who is required to take out an annual pass or licence, unless such Indian first produces his pass or licence. Penalty, £5.

(No. 42.)—This Act enables an Indian immigrant, under certain circumstances, to enter into a new term of indenture not exceeding five years.

Supply Acts (Nos. 17, 24).

Other Acts of minor importance are:

Customs.—An Act to amend the Customs and Shipping Act, 1899 (No. 19).

Sheriffs.—An Act to amend the Supreme Court Act, 1896 (No. 21), as to the duties of Sheriffs.

Excise.—An Act to amend the Excise Act, 1901 (No. 25).

Derelict Stock.—The Derelict Stock Act (No. 22), disposing of a fund representing proceeds of unclaimed live-stock taken possession of during the Boer War.

Militia.—An Act to amend the Militia Act, 1903 (No. 30), as to requisitioning supplies when on active service.

Liquor.—An Act to amend the Liquor Laws and Licences in their application to Zululand (No. 31).

Judicature.—An Act to amend the Magistrates' Courts Act, 1896 (No. 32).

Mines.—An Act to amend the Natal Mines Act, 1899 (No. 34), giving mine-owners a right of set-off in respect of licence fees and royalties.

Cattle-stealing.—An Act to amend the Cattle-stealing Act, 1898 (No. 41).

3. ORANGE RIVER COLONY.

[*Contributed by* W. R. Bisschop, LL.D.]

Ordinances—Lieutenant-Governor in Council, Nos. 1 to 36 of 1905.

Errors.—No. 1 corrects certain errors committed in the translation of certain Acts set out in the schedule.

Admitted Agents.—No. 2 confers on persons who passed the examination for law agents in the late Orange Free State, but were never admitted to practise, the privilege to practise in any Court of the Resident Magistrates. The High Court is allowed to admit such persons as conveyancers.

Administration of Justice.—No. 3 provides for a further extension of the jurisdiction of Special Justices of the Peace and an increase in their powers of punishment.

No. 6 amends the law with reference to Criminal Procedure. The Justices of the Peace receive the right to hold a preparatory examination on receiving information of any crime or offence within the area of their jurisdiction, and to these examinations the provisions of sections 79 of the Magistrates' Courts Ordinance (Orange River Colony) No. 7 of 1902 (Journal, N.S. Vol. V. Part II. p. 383) shall apply.

The magistrates shall have power to admit a person to bail who has been sentenced to imprisonment, but who has appealed to the High Court, or whose sentence is under review. If bail be refused appeal may be made to the High Court against such refusal.

The Magistrates or Special Justices of the Peace shall at any preparatory examination have the power to commit the accused person for sentence on that person's admission of guilt.

The words of the bail bond are amended, while provisions are made for the ordering of further sureties to be found, for the discharge of such sureties, and for their rendering the accused into Court. Further rules are inserted as to the arrest of persons on bail about to abscond, recognisances and deposits instead of recognisances, death of sureties, and the postponement and adjournment of trials.

No. 15 provides for the examination by interrogatories of persons resident in the Orange River Colony whose evidence shall be required in civil cases pending in any Magistrate's Court in any neighbouring Colony or British Possession. Such examination shall be conducted in the same manner as of a witness in a case pending in a Magistrate's Court in the Orange River Colony, and the witness shall be equally summoned and compelled to appear as if summoned to give evidence in the Court of such Magistrate. The operation of this Ordinance depends upon reciprocal provisions being made by such other Colonies to which this Ordinance shall apply.

No. 31 authorises the Lieutenant-Governor from time to time to make, amend and repeal regulations for the better identification of criminals by means of a system for recording finger-prints or otherwise, and a refusal to submit to such methods of identification shall be punishable, the jurisdiction thereof being placed in the hands of the Resident Magistrates.

Naturalisation.—No. 7 amends the Naturalisation of Aliens (Orange River Colony) Ordinance No. 1 of 1903 (Journal, N.S. Vol. VI. Part II. p. 400), and recognises certificates of naturalisation, or certificates of re-admission to British nationality, under the English Naturalisation Act, 1870.

Railways.—No. 8 authorises the Municipality of Ladybrand to have a railway constructed from Ladybrand to Modderpoort and to have a loan issued for that purpose on the conditions of an Agreement between the High Commissioner and the Municipality of Ladybrand set out in Schedule A to this Ordinance, and a further Agreement between that Municipality and the Central South African Railways Administration set out in Schedule B.

No. 28 authorises the construction of a railway between the towns of Bethlehem and Kroonstad and the working thereof and of a railway line between Van Reenen and Bethlehem by the Government of Natal. It contains in its Schedule the Agreement for its construction and working.

Game.—No. 9 amends and consolidates the law with reference to the preservation of game, repealing the provisions of Law No. 17 of 1898, except Articles 2 to 9 thereof and Proclamation (Orange River Colony) No. 6 of 1902. It fixes the time for the close season, allows landowners and *bonâ fide* lessees to kill game in close season under certain circumstances and requires game licences (for shooting and selling of game) for

all persons except the above named. Shooting on Sundays is prohibited, while the protection of game may be extended by proclamation.

Liquor Licences.—No. 10 amends the Liquor Licensing Ordinance (Orange River Colony) No. 8 of 1903, and repeals the amending Ordinance No. 22 of 1903 (Journal, N.S. Vol. VI. Part. II. p. 402).

Land Expropriation.—No. 11 repeals Law 1 of 1899 and Proclamation (Orange River Colony) No. 8 of 1902 and consolidates and amends the law with reference to the expropriation of land for public purposes. Compensation shall be paid for land so expropriated, the amount to be settled by agreement or by arbitration. The procedure for such arbitration is set out in the Ordinance.

No. 32 provides for the method of expropriation of property acquired for railway purposes, and has to be read in conjunction with the Railway Expropriation of Land Ordinance (Orange River Colony) No. 46 of 1903—s. 5 whereof is thereby repealed—and the above-mentioned Expropriation of Lands and Arbitration Clauses Ordinance (Orange River Colony) No. 11 of 1905.

Crown Lands.—No. 14 authorises the Lieutenant-Governor to dispose of small portions of Crown Land set out in the Ordinance and not otherwise alienable under the laws of the Colony.

Scab.—No. 12 amends the Scab Ordinance (Orange River Colony) No. 14 of 1903 (Journal, N.S. Vol. VI. Part II. p. 404).

Stamp Duties.—No. 13 amends the law relating to Stamp Duties and Licences, being Ordinance (Orange River Colony) No. 10 of 1903 (Journal, N.S. Vol. VI. Part II. p. 403). The persons are named who shall be liable for having certain documents stamped. Certain offences are created in relation to dies and stamps. A number of changes are introduced in words and figures while the tariffs 4, 6, 7, and 9, and Schedule C undergo certain alterations. A new Schedule is added regarding tariff-stamps on leases and agreements.

Municipal Councils.—No. 14 supplements and amends the provisions of law with reference to Municipal Councils and Village Management Boards, being contained in Ordinance (Orange River Colony) No. 12 of 1904 (Journal, N.S. Vol. VII. Part I. p. 171), specially as regards municipal elections; new councillors entering upon their duty; electoral procedure; accounts of loans received from the Government; inclusion of lands acquired contiguous to boundaries in the municipal area; quit-rents; hospitals; extension of scope of municipal regulations: and others of minor importance.

Prohibition of Import.—No. 16 regulates the introduction into the Orange River Colony of articles or things which by reason of being affected or supposed to be affected with disease might be detrimental to the interests of the Colony.

The Lieutenant-Governor shall have the power by proclamation to make

such regulations and to revoke or alter them. The prohibited articles or things may be inspected and seized.

Roads.—No. 17 repeals Chapters LXXVI., LXXIX., LXXX., LXXXI., LXXXII., CXXIII. and CXXXVIII. of the Law Book, Laws No. 13 of 1892, 7 of 1893, 26 of 1894, 4, 5, and 25 of 1896, and 5 of 1898, and consolidates the laws relating to the construction and maintenance of certain roads within the Colony and defines the respective rights of landowners and travellers in connection therewith. Main roads shall be under control of a director of public works assisted by a Chief Engineer and other road inspectors, while the Lieutenant-Governor shall be able to proclaim new main or district roads. The closing of main roads shall not be decided upon without a special commission being heard on its desirability. Rules are laid down for the entry upon land required for a road by the Chief Engineer, the width of public roads, the fencing across public roads. Several penalties are set out for obstructing public roads, the opening of gates, the malicious injury to roads or gates and the placing or leaving of rubbish on the roads.

Every farm shall be subject to a right of outspan, but the owner may beacon off an outspan over such an area as is set out in the Ordinance and subject to the inspection by the Chief Engineer, and to a number of rules set out in the Ordinance.

No. 33 amends the Roads Ordinance (O.R.C.) No. 17 of 1905.

Administration of Estates.—No. 13 repeals Chapters LIV. and LV. of the Law Book and Law No. 17 of 1896, and regulates the administration of the estates of deceased persons, minors, and lunatics, and of derelict estates.

Notice of death to be given to the magistrate of the district or to the Master of the High Court of Bloemfontein. All wills to be registered in a central register, kept by the said Master, whether originally deposited with the Master, or kept privately, or passed before a notary public; copies to be kept by the local magistrates.

On the death of any person an inventory shall be made of all goods and effects belonging to the deceased at the time of his death, and all originals of such inventories shall be transmitted to the Master, while a copy shall be kept by the magistrates of the district where the inventory was made.

Regulations are made for the custody of the estate pending the issue of letters of administration, either to the executor named in the will or to the executor dative appointed by the Master. Rules are set out as to the removal of executors, revocations of letters of administration and security for due administration.

The duties of executors are set out in full.

Special provisions are made of a summary appointment of administrators for estates less than £100, while for estates of less value than £50 the

Master may dispense with the appointment of an administrator, and may direct the manner in which such estates shall be administered.

Special provisions are also made for the recognition and validation of letters of administration lawfully granted in the United Kingdom and every British Colony and British Possession or Protectorate, or by British Consular Courts.

Part III. of the Ordinance is entirely taken up by the provisions regarding the appointment of tutors over minors and their duties, and the Guardian's Fund which is administered by the Master and takes the place of the former Orphan Chamber's Fund.

Part IV. contains rules regarding the Master and his duties, and other general rules.

Bloemfontein.—No. 19 supplements and amends the provisions of the Bloemfontein Municipal Ordinance (Orange River Colony) No. 25 of 1903 (Journal, N.S. Vol. VI. Part II. p. 405).

No. 36 provides for the levying of a Sanitary Rate for the Municipality of Bloemfontein, and otherwise amends the provisions of the Bloemfontein Municipality (Supplementary) Ordinance (Orange River Colony) No. 19 of 1905.

Rabbits.—No. 20 prohibits the introduction into, and controls the keeping of live rabbits in the Orange River Colony.

Audit.—No. 21 repeals Chapter LXXII. of the Law Book, and institutes the office of Auditor-General. It sets out the duties and powers of this public servant, and regulates the taking of audits of the Public Accounts of the Colony.

Accounts.—No. 22 creates the offence of falsification of accounts and renders it punishable with imprisonment, with or without hard labour, for a period not exceeding seven years.

Finance.—No. 4 appropriates a sum of money not exceeding £3,012 0*s.* 4*d.* for the purpose of covering certain authorised expenditure of the financial year 1904.

No. 23 appropriates a further sum not exceeding £22,277 for the service of the year ending June 30, 1905.

No. 30 appropriates a sum of £635,052 for the service of the year ending June 30, 1906.

Pensions.—No. 5 amends the Pension Ordinance (Orange River Colony) No. 23 of 1904.

Graves Fund.—No. 24 provides for the establishment of a fund in the hands of trustees for the maintenance and repair of the burial grounds and graves of persons who died during the period covered by the operations of the late war within the Colony or in any Concentration Camp established in Cape Colony for the reception of inhabitants of the late Orange Free State.

Breeding Stock and Dams.—No. 25 provides for the granting of loans

to Farmers' Associations and to farmers for the purchase of breeding stock and the construction of dams.

Surveys.—No. 26 provides for the adjustment of township surveys, in order to make the occupied "erven" in certain towns and villages in the Colony correspond with the general plans of such towns or villages. Such amended survey must be authorised by the Lieutenant-Governor.

Electric Lighting.—No. 27 authorises the Lieutenant-Governor to from time to time make, amend, and repeal regulations in accordance with the regulations of the Board of Trade of the United Kingdom for the proper and safe employment of electricity for the purpose of electric lighting and power generally.

Public Education.—No. 29 amends the Public Education Ordinance (Orange River Colony) No. 27 of 1903 (Journal, N.S. Vol. VI. Part II. p. 404).

The Colony shall be divided into school districts, and every district shall have a school committee, the bare majority of its members to be elected by the white inhabitants of the district and the rest to be nominated by the Government. Electors shall be all who are on the voters' rolls in municipalities, owners and occupiers of farms, lessees of Crown lands, and those villagers who would be on the voters' roll if the village were a municipality.

Rules are set out for the election of committee members, also for the conduct of business by the committees and their proceedings, the powers of the chairman of committee and the election of officers of committee.

Education at all Government schools, except high schools, shall be free. The cost of maintaining the schools shall be found by local contribution which shall be fixed for every year by the Director of Education in consultation with the Colonial Treasurer and levied by each committee from its own district in any manner which the committee may consider wisest. At the proposal of the school committees the Government may increase local contributions. The committee shall have free control of such funds as shall be placed at its disposal upon requisition rendered monthly to the Education department, but expenditure shall be regulated by conditions laid down by that department and be subject to audit of accounts.

The general powers and duties of committees are set out, as well as the rules for the appointment, suspension, and dismissal of teachers. Every teacher must hold a certificate of competency and shall be appointed by the Lieutenant-Governor after he shall be selected and nominated by the district committee, and his nomination shall have been approved of by the Director of Education. The district committee shall only be able to nominate a teacher from the registers of qualified teachers kept by the Education Department, or—in case the committee wants to advertise for applicants—from among such applicants as shall have sent in their application through the department and be considered fit by that department to be placed on

the said lists. The dismissal of teachers shall be made by the Director and must be confirmed by the Lieutenant-Governor.

The attendance at school shall be compulsory for all children between ten and sixteen years of age, except for reasons set out in the Ordinance. The district committee has to summon parents of children who do not so attend the school and may prosecute such parents who, if convicted, will be liable to pay fines.

The district committee may appoint sub-committees.

Private schools shall be under the supervision of the district school committees, and these committees may report to the Government regarding the advisability of closing any of these schools. The Government may on investigation of such complaints order the closing of the school.

The Lieutenant-Governor shall make regulations for the Normal School at Bloemfontein and the Government high schools, while special regulations are set out for the education at Grey College and the High School for girls at Bloemfontein.

English shall be the medium of instruction, but any scholar shall at the request of his parent or guardian receive instruction in the Dutch language, and the time devoted to the teaching of English and Dutch, as languages, shall be the same.

Religious instruction shall be given in all Government schools for periods not exceeding in all two hours a week according to a purely historical handbook to be approved of by the Education Department, but no child need attend school during the time devoted to Bible history. Teachers who declare not to be able conscientiously to undertake the teaching of Bible history shall be exempted therefrom. Dogmatic instruction may be given at the wish of the parents by any minister of religion who has been recognised by the Government, but only in separate parts of the school buildings and after school hours.

In the schedule the different districts are set out.

Volunteer Corps.—No. 35 contains provisions for the formation and regulation of volunteer corps.

4. THE TRANSVAAL.

[*Contributed by* W. R. Bisschop, Esq., LL.D.]

Swaziland Proclamations by the High Commissioner, 1905—Nos. 1 to 10.

Trade Licences.—No. 1 amends Law No. 17 of 1899 of the Transvaal regarding the granting of trade licences.

Preservation of Game.—No. 3 prescribes under s. 3 of the Game Preservation (Transvaal) Ordinance No. 29 of 1902 (Journal, N.S. Vol. V. Part II. p. 398), the close time or fence seasons within which it shall not be lawful to kill any game.

No. 7 establishes a certain portion of the territory of Swaziland as a game reserve.

Natives.—No. 4 declares that all the powers and jurisdiction exercisable in the Transvaal by the Commissioner of Native Affairs under certain Acts may be exercised by the Native Commissioner for Swaziland.

No. 8 amends Regulation 37 under the Native Passes Proclamation (Transvaal) No. 37 of 1901 and (Transvaal) Ordinance No. 27 of 1903, (Journal, N.S. Vol. VI. Part II. p. 410), as promulgated by Proclamation No. 18 (Transvaal Administration) of 1903 as far as applicable to Swaziland.

Ports.—No. 5 declares certain places as additional ports of import and export.

Juries.—No. 6 suspends the working of s. 3 of the Swaziland Administration Proclamation, 1904, and re-enacts the provisions of the Special Criminal Court (Swaziland) Jurisdiction Proclamation, 1904, as there are not to be found a sufficient number of persons qualified and able to serve as jurors.

Marriages.—No. 10 legalises marriages solemnised within the territory of Swaziland by unauthorised ministers of religion during the period between October 11, 1899, and October 15, 1904.

Transvaal Ordinances—Lieutenant-Governor in Council—Nos. 1 to 36 of 1905.

Administration of Justice, Circuit Courts.—No. 1 further regulates the procedure before Circuit Courts in criminal cases, as far as it regards compelling the attendance of witnesses and the practising of advocates and attorneys.

Town Lands.—No. 2 amends the Town Lands Ordinance (Transvaal) No. 14 of 1904 (Journal, N.S. Vol. VII. Part I. p. 180), and makes special provisions relative to the exchange of certain portions of town lands of Middelburg and Potchefstroom.

Proclaimed Lands.—No. 7 regulates brickmaking, lime-burning, and quarrying on land held under claim licences, provided that every holder of such claim or any third person with his consent shall require a permit for digging stone and burning bricks and lime, and that he shall require the consent of the owners of the land to obtain such permit. Only one such permit shall be granted for any one claim and the owner shall be entitled to a half-share of the fees. On certain grounds—which are set out—the grants may be refused.

Occupation Farms.—No. 13 amends the Occupation Farm Ordinance (Transvaal) No. 25 of 1904 (Journal, N.S. Vol. VII. Part I. p. 180), as far as regards the power to issue freehold title in exchange for occupation title and the forfeiture of rights granted under Law No. 8 of 1886.

Townships.—No. 19 regulates the laying out of townships on private land. A Special Board, called the Townships Board, shall be constituted

to inquire into and report upon all applications made to the Colonial Secretary for permission to lay out a township upon a farm. It regulates the procedure for such application and the consideration thereof and the transfer and vesting of lands reserved for public purposes as well as the abandonment of townships.

Crown Lands.—No. 34 transfers certain Crown Lands to the Municipality of Pretoria for certain military purposes and on the conditions set out in the Ordinance.

Explosives.—No. 4 consolidates and amends the law relating to the manufacture, storage, sale, importation and exportation of explosives. It repeals the whole of Law No. 10 of 1883 and No. 27 of 1896, the Ordinance (Transvaal) No. 4 of 1903 (Journal, N.S. Vol. VI. Part II. p. 406). Licence is necessary for the manufacture and storage and dealing in explosives, while permits are necessary for the importation, exportation and use of these articles. It provides the procedure for obtaining a licence for their amendment, transfer, and revocation. Powers of the Inspectors are set out. The trial of these offences falls under the special jurisdiction of the Resident Magistrate.

Insolvency.—No. 5 repeals Article 149 of the (Insolvency) Law No. 15 of 1895, grants power to the Governor to appoint an Insolvency Commissioner, and substitutes a new tariff of fees chargeable by the Master in Insolvency and Liquidation matters, whilst regulating Law No. 5 of 1881.

Preservation of Game.—No. 6 repeals the Game Preservation Ordinance (Transvaal) No. 29 of 1902 (Journal, N.S. Vol. V. Part II. p. 398), and the Amendment Ordinance (Transvaal) No. 30 of 1903 (Journal, N.S. Vol. VI. Part II. p. 416), and consolidates and amends the law relating to the preservation of game.

Finances.—No. 8 appropriates the sum of £62,756 5*s.* 9*d.* for the service of the year ending June 30, 1902.

No. 9 appropriates the sum of £256,673 for the service of the year ending June 30, 1905.

No. 10 appropriates the sum of £2,569 15*s.* 1*d.* for the service of the year ending June 30, 1906.

No. 11 provides that certain sums of money out of balances remaining in the Treasury on June 30, 1905, and unappropriated for any other purposes shall be applied for the construction of certain works set out in the Schedule to the Act.

No. 12 provides the same regarding balance remaining in the Treasury on June 30, 1904.

Transfer Duty.—No. 14 amends the Transfer Duty Proclamations (Transvaal) No. 8 and 27 of 1902 (Journal, N.S. Vol. V. Part II. p. 387 (8)) by substituting new provisions as to persons chargeable with transfer duty, as to the ascertainment of the value of fixed property, and as to others by providing the exemption from transfer duty in certain cases, and by granting powers to the Lieutenant-Governor to make certain regulations.

Stamp Duties.—No. 16 introduces a number of amendments of the Stamp Duties Amendment Proclamations (Transvaal), Nos. 12 and 26 of 1902 (Journal, N.S. Vol. V. Part II. p. 388).

Administration of Estates.—No. 15 amends the Administration of Estates Proclamation (Transvaal), No. 28 of 1902 (Journal, N.S. Vol. V. Part II. p. 393), by providing a summary procedure for the appointment of an executor to estates of persons not resident in this Colony whose estates consist only of shares in any company, and for the dispensing of such procedure in the case of estates under £100, and the simplifying thereof in the case of estates under £200. It further contains provisions for the preservation of the interests of minors, the investing of moneys of minors paid into the Guardian fund, and the payment into that fund of moneys remaining unclaimed in banks and other companies.

Medicine, Dentistry, and Pharmacy.—No. 17 amends the Medical Dental and Pharmacy Ordinance No. 29 of 1904 (Journal, N.S. Vol. VII. Part I. p. 179) as to the provisions therein contained regarding the sale of poisons.

Selati Railway.—No. 21 makes provisions for applying any moneys accruing to the Crown in respect of its share of the net proceeds of any mine worked under the Precious Stones Ordinance (Transvaal) No. 66 of 1903 (Journal, N.S. Vol. VI. Part II. p. 414), to the redemption of the debentures of the Franco-Belgian Northern Railway Company which were guaranteed to the holders by the Government of the late South African Republic.

War Stores.—No. 22 sets out the powers of the Commissioners appointed by His Majesty to hold an investigation in the Transvaal respecting war stores in South Africa, and makes provisions to facilitate their proceedings in that Colony.

Licences.—No. 23 repeals Ordinance (Transvaal) No. 50 of 1902 and four other laws, and provides rules for the granting of licences to carry on certain trades as set out in the second Schedule of the Ordinance, thereby amending the law relating to Revenue Licences.

Licences.—No. 35 regulates the trading upon ground held under mining title in the mining districts of Johannesburg, Boksburg, and Krugersdorp. In order to exercise the right of trading in those districts, licences shall not be issued under the Revenue Licences Ordinance (Transvaal) No. 23 of 1905, but special licences shall be required, to be issued by a special Board which shall be specially nominated for the granting of such certificates. The powers of such Board are fully set out as well as the mode of procedure to obtain such certificates.

Johannesburg.—No. 24 makes provisions to enable the Lieutenant-Governor to grant certain lands to be conveyed to the Municipality of Johannesburg for local purposes without the payment of transfer duty.

Municipal Councils.—No. 26 amends the Municipalities Election

Ordinance (Transvaal) No. 38 of 1903 (Journal, N.S. Vol. VI. Part II. p. 409) by substituting new clauses instead of ss. 16, 29, 32, 43, 72 (subsection 10), 85 and Chapter VII. of that Ordinance, and is to be read as one with that Ordinance and the Amending Ordinance No. 49 of 1904 (Journal, N.S. Vol. VII. Part I. p. 180).

Municipalities.—No. 29 amends the Local Authorities Rating Amendment Ordinance (Transvaal) No. 45 of 1904 (Journal, N.S. Vol. VII. Part I. p. 181).

Rand Water Board.—No. 30 amends the Rand Water Board Extended Powers Ordinance (Transvaal) No. 48 of 1904 (Journal, N.S. Vol. VII. Part I. p. 181).

Unskilled non-European Labourers.—No. 27 amends the Labour Importation Ordinance (Transvaal) No. 17 of 1904 (Journal, N.S. Vol. VII. Part I. p. 177), and confers jurisdiction on the superintendent and inspectors of labourers appointed under the 1904 Ordinance to try and punish certain offences. It provides the procedure of such trials and enacts that the decisions are subject to review by and appeal to the Supreme Court.

Every employer of labour in mines shall provide a lock-up on the mines. The superintendent shall have the right to impose a collective fine on all labourers in a gang, and he shall have the power to return dangerous labourers to their country of origin. In amending s. 31 of the 1904 Ordinance fresh provisions are made penalising the possession by the sale of opium to labourers.

Labourers found outside Witwatersrand district may be arrested by any private person.

Diamonds.—No. 25 grants certain rights and powers to the Premier (Transvaal) Diamond Mining Company, Ltd., to use and convey water across certain lands to its works.

Mining.—No. 31 amends the Mines Works and Machinery Regulations Ordinance (Transvaal) No. 54 of 1903 (Journal, N.S. Vol. VI. Part II. p. 413) by substituting a new interpretation clause, granting additional powers as to making Regulations, substituting new provisions regarding work on Sundays, regarding the construction of railway sidings, tramways and other works, regarding penalties not expressly provided for, regarding the powers of Inspectors of Mines and Chief Inspectors of Machinery to try breaches of certain Regulations and regarding the employment of native labourers below a certain age.

No. 32 makes provisions relating to the health of coloured labourers on mines and works in the labour districts and for securing uniformity in carrying out such provisions.

The Lieutenant-Governor shall have power to make regulations relative to the medical inspection, the housing and food of coloured labourers, and these regulations shall have the effect of suspending municipal by-laws

on the same subject-matter. The Ordinance shall, however, not apply to the Labour Importation Ordinance, 1904.

Marriages.—No. 33 legalises certain marriages between persons set out in the two Schedules to this Act which were not solemnised in accordance with the provisions of Law No. 3 of 1871 regarding the marriages between white persons, or with the provisions of Law No. 3 of 1897 regarding marriages between coloured persons.

Opium.—No. 36 regulates the importation of opium. It is prohibited under penalties of fines and imprisonment to import opium except under permit, and the possession of opium without such permit, except for medicinal purposes, shall be a criminal offence. Powers are granted to police constables having a written authority from a Magistrate or Justice of the Peace to enter premises on which there is reasonable suspicion that opium is kept.

VI. WEST AFRICA.

[*Contributed by* ALBERT GRAY, ESQ., K.C.]

1. GAMBIA.

Ordinances passed—16.

Tariff.—The chief purpose of an amending and consolidating Tariff Ordinance (No. 1) is to provide for a drawback of 95 per cent. on the re-exportation of duty-paid goods, and for the re-exportation free of duty but subject to warehouse rent of bonded goods.

By another Ordinance (No. 5) the standard proof of spirits for payment of duty is reduced to 12½ per cent. below proof by Sykes's hydrometer. The purpose is to assimilate the standard to that prevailing in the French and German West African settlements.

Fugitive Criminals.—The principles and procedure of the Extradition Act are extended to the Colony by No. 6.

Petroleum.—Ordinance No. 7 deals with the importation and storage of petroleum. It follows the English precedents, but it should be noted that petroleum which gives off an inflammable vapour at less than 95° F. is not allowed to be imported.

Mohammedan Law.—No. 10 is a short but very important law. After enacting that marriages duly contracted in accordance with the Mohammedan law are valid, and that the issue of such marriages are legitimate as if the marriage had been solemnised under the Marriage Ordinance, 1862, the Legislature proceed to establish a Mohammedan Court, under a Cadi, appointed by the Governor, for the trial of all disputes between Mohammedans affecting

status, marriage, succession, donations, testaments, and guardianship. The procedure and practice of the Court are to follow the rules of Mohammedan law. There is an appeal to the Supreme Court, which is to be assisted by a "Tamsir" or person learned in Mohammedan law. The experiment seems a step in the right direction, and its working will be observed with interest.

Intestates' Estates.—This Ordinance (No. 12) is composed of three parts. The first establishes a curator of intestates' estates. He is to be appointed by the Governor, but must give security. During a vacancy of the office, the Attorney-General is to act. The second part provides for the devolution of realty as personalty. The leading section runs thus: "Where real estate is vested in any person without a right in any other person to take by survivorship, it shall on his death, notwithstanding any testamentary disposition, devolve to and vest in his personal representatives or representative from time to time, as if it were a chattel real vesting in them or him." The third part deals with the special case of a European officer dying leaving estate, but neither widow nor next-of-kin, within the Colony. Here the curator is employed to administer the colonial estate, remitting balance to the legal representatives in England.

2. GOLD COAST.

(i) COLONY.

Ordinances passed—16.

Boundaries.—A multiplicity of law-suits is said to exist in the Colony with respect to the boundaries of properties. The boundaries run through forest and are not marked. This Ordinance (No. 6) gives power to the Court to determine any boundary on application of either party to the dispute.

Police.—No. 9 establishes a Police Reward Fund, to be built up from (*a*) departmental fines and stoppages of pay, and (*b*) proceeds of property of deceased constables remaining unadministered for one year after death.

(ii) NORTHERN TERRITORIES.

Ordinances passed—2.

Military Forces.—The various Acts of the Colony with respect to the establishment, etc., of the West African Frontier Force are applied to the Territories (No. 1).

(iii) ASHANTI.

Ordinances passed—7.

These Ordinances do not call for special comment.

3. LAGOS.

Ordinances passed—10.

Tariff.—The principal amendments made by the new law (No. 1) are that the standard strength of spirits is reduced as at the Gambia (*vide supra*, p. 497); that oil *bonâ fide* imported for motor power is exempted; and that power is taken for the Governor, with the consent of the Legislative Council, to add to, vary, or revoke any part of the schedules to the Tariff Ordinance of 1904—that is to say, that any new duties may be imposed or exemptions made by that method. The tariff may thus be removed from the statute-book—a change of very doubtful expediency.

Minerals.—Two classes of prospecting licences are provided for (No. 6): "exclusive licences" giving the sole right to prospect over areas not exceeding 500 square miles, and "general licences." Mining leases of Crown lands are granted by the Governor; those affecting native lands are granted by the native authority and approved by the Governor. The fees for licences, etc., do not appear in the Ordinance, but are fixed by rules. They are (1) for an exclusive licence, £1 per square mile; (2) for a general licence, £5; (3) for a lease, £50 per square mile. The tax on profits is 10 per cent.

4. SIERRA LEONE.

Ordinances passed—48.

Witchcraft.—A person who practises "fangay" is liable, on conviction, to a fine of £50 or twelve months' imprisonment (No. 6). A person is said to practise "fangay" who "uses or pretends to use any occult means, or pretends to possess any supernatural power or knowledge or is in possession of any instrument of fangay and who acts in any of the ways aforesaid with intent to effect any fraudulent or unlawful purpose or for gain or for the purpose of frightening any person."

This would pass for a definition of witchcraft in Europe.

Public Buildings Insurance.—The Ordinance passed in 1903 authorising the Government to be their own insurers is now repealed (No. 7).

Tariff.—The same amendment of the spirit duty is made as at the Gold Coast and Gambia.

Tribal Representation.—A noteworthy endeavour is made by No. 16 to bring the tribes of the Protectorate in touch with the Colonial Government. The paramount chiefs are grouped into three classes of assemblies—local, district, and general. The chiefs and assemblies are grouped by races, the local assemblies electing representatives to the district, and the district to the general. The district commissioner or other officer of the Government, if present, presides at all assemblies. The functions of the assemblies are

advisory only, *e.g.* with respect to legislation affecting the race or the districts which they inhabit, boundary disputes, complaints against paramount chiefs, etc. The law thus gives form to the sacred African rights of *palaver*.

A second part of the Ordinance deals with the rights of chiefs to call out the labour of their tribesmen for works of public utility. Those rights are to be regulated by orders of the Governor. Special provisions are made in the Ordinance with respect to three districts of the Protectorate. Not more service is to be given for the cultivation of the chief's farm than will leave labourers sufficient time to cultivate their own land. The chiefs are entitled, with the approval of the District Commissioner, to commute service to a fixed tithe or share of the labourer's crop.

A third part of the Ordinance deals with the settlement on native lands of non-natives. They must "make the customary presents to the paramount chief": these may be commuted at 2*s.* 6*d.* per mensem or, if a house is built, at £1 per annum.

The Ordinance further enables a paramount chief of a district in which there are many settlers to apply for the appointment of one settler to sit with him as a "combined Court" for the settlement of disputes between natives and settlers. It also prohibits natives from leaving a chiefdom to which they belong "without complying with the native law respecting journeys" and "without notifying the tribal authority," and penalises the harbouring of natives who thus transgress the customary law.

Another Ordinance (No. 19) provides for the exercise of tribal authority in Freetown. It seems that some headman usually strives to control his tribesmen, though the conditions of a large town are adverse. Where such a headman is recognised by the tribe, by the Corporation of Freetown, and by the Governor, he may as tribal ruler make regulations for his tribe with respect to many social matters, *e.g.* indebtedness, poor relief, domestic disputes, education, observance of laws, etc. The tribal ruler goes out of office in five years unless re-appointed.

The powers of headmen in the Colony are dealt with in another Ordinance (No. 38), which provides for the calling out of labour for the purposes of road repair, bridge maintenance, etc. The headman is also required to make inquiries as to sudden or suspicious deaths, and to report.

Labour Contracts.—This Law (No. 17) fixes the conditions of native labour contracts. Where a workman is employed on a specified work, he must remain till its completion; on the other hand, the employer is not entitled to turn him off till then; but in both cases the Court may exercise a dispensing power.

Mohammedan Marriage.—Marriage according to the Mohammedan law is recognised by No. 20, which also provides that property of a Mohammedan shall in case of intestacy devolve according to Mohammedan law.

Apprentices.—An experiment to which much interest will attach is made by Ordinance No. 30. A Board appointed by the Governor is

authorised to give certificates of proficiency in the scheduled trades (about thirty in number). A person holding a certificate is licensed to take apprentices. The Governor may also confer upon any institution which provides technical training the right to grant certificates of proficiency. The person who takes an apprentice under the Ordinance is empowered to give him a certificate of proficiency at the end of his apprenticeship.

Murder Societies.—We noted last year the continuation of the Ordinance for the suppression of the "Human Leopard Society." It is again continued to the end of 1906. In 1904 there were five cases of these murders in one district of the Protectorate, forty-seven persons being tried and twenty-eight convicted of murder.

5. NORTHERN NIGERIA.

Proclamations—13.

Domestic Servants.—The enactments of No. 1 may be justified by local necessities, but would hardly commend themselves to a free community. A person desiring employment as a domestic servant must obtain a licence from the officer of police, for which he has to pay a fee. The officer must be satisfied of the good character of the applicant, and must not give a licence to a person who has been convicted of felony. An unlicensed person is liable to a penalty if he acts or offers himself as a domestic servant: likewise any person who knowingly employs an unlicensed person.

6. SOUTHERN NIGERIA.

Proclamations—16.

Tariff.—The same amendment of the law relating to standard proof of spirits is made by No. 3 as is made in the other West African Colonies (*vide supra*, Gambia).

Infectious Disease.—An important law (No. 1) deals with this subject, but as its provisions resemble those of our Public Health and Diseases Prevention Acts, its provisions need not be described in detail. It comprises sections dealing with compulsory vaccination, but the happy backwardness of Nigeria is shown by the absence of any reference to the "conscientious objector."

Education.—An excellent scheme of elementary and technical education is provided by No. 4. There is a Director of Education, with inspectors and teaching staff, acting under a Board of Education over which the High Commissioner presides, local matters being dealt with by School Committees. There are two classes of primary schools, *i.e.* Government

schools and assisted schools, the latter being those of the missionary societies. Besides these there are technical, intermediate, and high schools, with provision for scholarships to those from the primary schools. There is no reference to any religious difficulty, and therefore none to "extended facilities" or "Cowper-Templeism."

Protection of Illiterates.—A law (No. 14) following those of Sierra Leone (No. 5 of 1898) and Gambia (No. 17 of 1902) provides the conditions under which a person may write any document or letter for another for reward. He must be licensed, and in this the law seems to go beyond the precedents quoted. He must clearly explain the document, and must insert his own name and address as the writer of it. He must not take more than 1*s.* per hundred words.

Wild Animals.—An order made under the Proclamation of 1901 prohibits the killing (except by holders of collectors' licences) of the following: vultures, secretary birds, owls, rhinoceros birds, giraffes, gorillas, chimpanzees, mountain zebras, wild asses, white-tailed gnus, elands, and little Liberian hippopotamuses. Birds during the nesting season are also protected—that is, partridges between August 1 and December 15, and waterfowl between March 1 and June 30.

VII. EAST AND CENTRAL AFRICA.

[*Contributed by* Albert Gray, Esq., K.C.]

1. BRITISH CENTRAL AFRICA.

Ordinances passed—10.

Alcoholic Liquor.—The import duty fixed by the Ordinance of 1904 at 12*s.* per gallon proof spirit is raised to 15*s.* (No. 3).

Divorce.—A local law of divorce is provided on the lines of the East African law of 1904, noticed in our Review for that year (Journal, N.S. No. XV. p. 191).

Immigration.—Restrictive provisions are made by No. 6, which go beyond the lines of the Aliens Act. They prohibit the immigration of (*a*) persons not in possession of visible means of support; (*b*) persons convicted of heinous offences and considered by the Commissioner to be on that account "undesirable"; (*c*) lunatics, and (*d*) persons suffering from dangerous, infectious, or contagious disease; (*e*) persons who are undesirable on political grounds.

2. EAST AFRICA.

Ordinances passed—13.

Wild Animals Protection.—Two Ordinances deal indirectly with this question. No. 4 prohibits possession, sale, or export of any female elephant's tusk or any male elephant's which weighs less than 11 lb., or any which in the proper officer's opinion formed part of such tusk. No. 6 authorises the Commissioner to export and sell any confiscated ivory.

The other Ordinances are without features of general interest.

3. UGANDA.

Ordinances passed—12.

Native Labour.—This question is dealt with under four heads: (1) porterage within the Protectorate; (2) service within the Protectorate; (3) engagement without for service within the Protectorate; and (4) engagement within for service without the Protectorate. Very full provision is made for the protection of porters employed in caravans. The hirer must lodge a deposit as security; every porter is registered, the caravan is liable to inspection and must be properly equipped, the porters' loads are limited, medicines must be provided, etc. As regards service within the Protectorate, every contract for periods exceeding two months must be in writing and registered. Servants are to be returned to the place where they were originally hired.

The other Ordinances do not call for special remark.

VIII. SOUTH ATLANTIC.

[*Contributed by* EDWARD MANSON, ESQ.]

1. FALKLAND ISLANDS.

Ordinances passed—9.

Liens on Wool (No. 1).—An Ordinance of 1875 gives a preferable lien on wool from season to season, and also makes mortgages of sheep, cattle, and horses valid without delivery to the mortgagee. Such an agreement must, however, be registered. This Ordinance extends the time for registration to three months.

Geese (No. 3).—This Ordinance is directed to the diminishing of geese in the islands. The particular variety found objectionable is the Upland

Goose (*Bernicla*, or *Clœphaga magellanica*). Government Receivers are appointed to pay a premium for beaks at the rate of 10*s*. per 100.

Rating (No. 4).—Amends the rating of Stanley.

Supply (Nos. 2 and 5).—These are Supply Acts.

2. ST. HELENA.

Ordinances passed—7.

Recovery of Small Debts (No. 2).—A special Court is constituted for this purpose. The judge is to sit at least once every month. Small debts are sums not exceeding £25. Wearing apparel, bedding, and tools, to the value of £5, are exempt from execution. No real or leasehold property can be levied on without the sanction of the Supreme Court, and no goods seized —not being perishable—are to be sold till after the expiration of five days.

Very wide powers are given to the judge.

Customs (No. 3).—This is an Ordinance regulating the collection of Customs, with statutory forms.

Stallion Donkeys (No. 4).—An annual licence (fee 10*s*.) must be taken out by every owner of a stallion donkey. A Board of Control and Inspection is constituted, with power to grant certificates exempting from castration any stallion donkeys the Board may consider useful for breeding purposes.

A register of such stallion donkeys is to be kept.

The services of the Government Spanish donkey and of all donkeys exempted from castration are to be available to the public.

Weights and Measures (No. 6).—This is a step towards a much-needed assimilation. The weights and measures for the time being lawfully in use in the United Kingdom, and no others, are to be used in the island.

Copies of the Imperial Standards of measure and weight are to be kept in the office of the police magistrate. All articles sold by weight (with certain exceptions—gold, silver, drugs) are to be sold by avoirdupois weight. Inspectors are appointed to examine weights and measures.

Health (No. 7).—This is an Ordinance for port sanitary matters, and schedules a number of Port Health Regulations.

Ships arriving from infected places are to be placed under observation.

Supply (No. 1).

IX. NORTH AMERICAN COLONIES.

1. DOMINION OF CANADA.

[*Contributed by* J. A. Simon, Esq., M.P.]

Public Acts—49; Local and Personal—128.

Supply (Nos. 1 and 2).

Census and Statistics (No. 5).—A permanent office is created under the Minister of Agriculture, to be called the Census and Statistics Office with a chief officer and staff. A census of Canada is to be taken on a day in June of the year 1911 and thenceforward every tenth year. The census is to ascertain:

(1) The population—name, age, sex, colour, social condition, nationality, race, education, religion, occupation.
(2) The houses for habitation, stores, warehouses, factories, and other buildings.
(3) The occupied land—value and condition, fallow, forest—unbroken prairie, marsh, waste land, etc.
(4) The products of factories, farms, fisheries, forests, and mines.
(5) The wage-earnings of the people within the census year.
(6) The municipal, educational, charitable, penal, and other institutions.
(7) Any matters specified in instructions.

Every enumerator is to ascertain by house-visiting and careful inquiry the required information with the utmost accuracy.

Besides the decennial census, the officer is to collect and tabulate agricultural, commercial, criminal, educational, vital, and other statistics and information from time to time.

Judges' clerks are to fill up schedules for criminal statistics, wardens of penitentiaries and reformatories, and sheriffs.

Contracts for Government Works (No. 7).—Whenever any work is to be constructed by contract, under the direction of any department of the Government the minister of the department is to invite tenders by public advertisement, except in cases of pressing emergency, and the tenders submitted to the Governor in Council.

Criminal Law (No. 9).—This amends the Criminal Code of 1892 by defining "trading stamps." A trading stamp includes any form of cash receipt, receipt, coupon, premium ticket, or other device to be given to the purchaser of goods by the vendor, and representing a discount on the prices of such goods, or a premium to the purchaser which is redeemable. It is

made an indictable offence to issue or sell "trading stamps" to a merchant or dealer in goods for use in his business.

Criminal Law (No. 10).—Amends the law on appeals from certain summary convictions.

False Representations to Deter Immigrants (No. 16).—Every person who does, in Canada, anything for the purpose of causing or procuring the publication or circulation by advertisement, or otherwise, in a country outside of Canada, of false representations as to the opportunities for employment in Canada or as to the state of the labour market in Canada intended to encourage, or induce, or to deter or prevent the immigration into Canada of persons resident in that country is guilty of an offence and liable to a fine of $1000.

Naturalisation of Aliens (No. 25).—This amends the procedure for obtaining naturalisation in the North-West Territories.

Salaries of Judges (No. 31).—These salaries range for the most part from $6,000 to $,8000 a year.

Inspection and Sale of Seeds (No. 41).—No one is to sell or offer, or have in his possession for the purpose of seeding, any seeds of cereals, clovers, or forage plants unless they are free from any seeds of the following weeds: wild mustard, wild oats, bindweed, purple cockle, etc., unless every package is marked with the name of the seller, the kind of seed, and the common name of the aforenamed weeds. There are a number of very special provisions as to other kinds of seeds.

Payment of Members (No. 43).—Each member of the Senate and House of Commons is to be allowed $20 for each day's attendance, if the session does not extend beyond thirty. If it extends beyond that there is to be a sessional allowance of $2,500, and no more.

Inspection of Water Meters (No. 48).—This fixes the standard measure for water and provides for the stamping of meters by the Inland Revenue Department.

Wireless Telegraphy (No. 49).—This is an Act for its regulation.

Minor Amending Acts deal with—

The Bank Act (No. 4).
Customs Tariff (No. 11).
Salary of Prime Minister (No. 12).
Franchise Act—King's Printer's Imprint (No. 13).
Inspection of Grain (No. 14).
Inland Revenue (No. 17).
Land Titles Act (No. 18).
Live-Stock Record Associations (No. 21).
Packing of Staple Commodities (Nos. 44, 45).

2. BRITISH COLUMBIA.

[*Contributed by* J. A. Simon, Esq., M.P.]

Public Acts--58; Private—12.

Animals (No. 1).—Vicious dogs are summarily dealt with here. If a person has a dog in his possession which has within six months bitten or attempted to bite any person, a magistrate may, on complaint, order the dog to be killed.

Medical Practitioner (No. 6).—A penalty, $25 to $100, is imposed on a registered medical practitioner contracting with an unregistered person to practise medicine or surgery for him.

Land Surveyors (No. 7).—Land surveying has become an important business in the Province. The object of this Act is to organise the profession. The existing body of land surveyors are incorporated with a Board of Management—to be elected annually—whose functions are to maintain discipline and honour among the members, grant certificates of membership after examination, make by-laws, etc. The conditions of admission to practise are—the candidate must be (*a*) a British subject, (*b*) twenty-one years of age, (*c*) must have passed an examination in the required subjects, following on three years' articles. The three years may be reduced to one where the candidate has a diploma from a British University or College.

Bills of Sale (No. 8).—This Act consolidates the Law on this subject. A novel provision is that every creditor of the grantor of a bill of sale may require the grantee to furnish him with a full statement of the accounts between the grantor and grantee.

Trade machinery is to be deemed personal chattels.

Bridges (No. 9).—Droves of animals are not to be driven over bridges at a pace faster than a walk: boats are not to be moored to piers: the limit of loads to be hauled over may be fixed.

Commercial Travellers (No. 10).—Commercial travellers not resident or domiciled in the Province are required to take out a licence. The licence does not empower the holder to carry a stock of goods for sale.

Insurance Companies (No. 11).—No extra-Provincial Insurance Company is to undertake any contract of insurance within the Province without a licence for that purpose. The fee is $250.

Companies' Mortgages Registration (No. 12).—This provides for public registration of a company's mortgages and charges on the lines of the English Companies Act, 1900 (ss. 14, 15). Unfortunately, here as in the English Act the list of mortgages and charges requiring registration is not exhaustive.

County Courts (No. 14).—This is a very elaborate Act of 185 ss. regulating the jurisdiction and procedure of County Courts in the Province.

Wigs in Court (No. 16).—"The wearing or use of the customary official wigs is hereby prohibited in any Court in this Province."

Judges (No. 17).—The qualification for appointment to the Bench of the Supreme Court has been ten years standing at the Bar. Five of these ten years must now have been actively spent in practice at the Bar of the Province.

Municipal Elections (No. 21).—The term "householder" is defined.

Explosives (No. 22).—Every parcel containing any explosive (except gunpowder) for mining, blasting, or farming operations must be stamped with the date of manufacture and the percentage of explosive material.

Fraudulent Preference (No. 24).—There is no Bankruptcy Act in the Province. Its place is partially supplied by such an Act as this. A "fraudulent preference" is defined as one which "has the effect of giving a creditor a preference." This eliminates the psychological element which has caused so much difficulty under the English Act by the use of the words "with a view to prefer."

Game Protection (No. 25).—The Law on this subject is amended in a number of particulars.

No person not a resident of or domiciled in the Province (with a saving for Army and Militia Officers) is to hunt, kill, or take game without a licence—$50—from the Game Warden.

Persons and conveyances may be searched for animals, birds, eggs, or fishes unlawfully obtained.

Highways (No. 26).—Any roads on which public money has been spent are to be declared public highways. Any public highway with less than 33 feet each way from the centre line may be enlarged to such width.

Drains are only to be constructed with the consent of the Chief Commissioner of Lands and Works.

Horticultural Board (No. 27).—The powers of the Board as regards fruit pests are extended to hops, grain, peas, beans, roots, tubers, and seeds. No person is to sell fruit-trees, plants, or nursery stock in the Province without a licence under the Act.

Immigration (No. 28).—Immigrants unable to write when required in some European language are (with certain exceptions) prohibited. Prohibited immigrants entering the Province are liable to six months' imprisonment. Masters of vessels are to give information and afford facilities.

Landlord and Tenant (No. 32).—Where a landlord distrains for rent on goods in the possession of the tenant and the goods are held by the tenant under a duly filed agreement for hire, contract, or conditional sale, the landlord is only to sell the interest of the tenant in the goods.

Public Schools (No. 44).—This is an Act of one hundred and twenty-eight sections dealing with organisation of public schools.

Supply (No. 48).

Trustees and Executors (No. 51).—This is an important Act adopting a number of rules analogous to those contained in the English Trustee Act, 1888, as to the right of trustees to plead the Statute of Limitations, improper advances on mortgage by trustees, their right to indemnity, their retirement, the vesting of trust property on the appointment of new trustees, etc. Last, not least, the Act gives the Court the power possessed by the Court in England under the Judicial Trustees Act, 1896, to relieve trustees from the consequences of a breach of trust where they have "acted honestly and reasonably and ought fairly to be excused."

Unclaimed Moneys (No. 52).—Moneys deposited in the Treasury of the Province, and unclaimed for ten years are to form part of the Consolidated Revenue of the Province, but claimants who can prove their title may obtain payment.

Wages of Deceased Workmen (No. 58).—This is a "widows Act." Under it "the wages earned by a workman during the period of three months before, and owing to him at the time of his death, shall be payable to the widow, if any, of such deceased workman, free from debts of such deceased."

Minor Amending Acts deal with the following:

Assessments (Nos. 2, 50).
Benevolent Societies—Conclusiveness of certificate of incorporation (No. 3).
Dentistry (No. 4).
Investment and Loan Societies (No. 5).
Procedure—Security for Costs (No. 15).
Distress, Costs (No. 19).
Judgments; Money realised by Sale of Land (No. 29).
Land Registry (No. 31).
Land Act (Nos. 33, 34).
Coal Mines (Nos. 35, 36).
Breeders of Live-stock (No. 46).
Special Surveys (No. 48).
Coal Tax (No. 49).
Water Clauses Act (No. 55).
Workman's Lien for Wages (No. 57).

3. MANITOBA.[1]

[*Contributed by* H. Stuart Moore, Esq.]

Acts passed—75.

Evidence on Commission (No. 11).—This Act amends the Manitoba Evidence Act, and enables the Court of King's Bench to order the attend-

[1] The second session of the eleventh Legislature commenced on December 6, 1904, and ended on January 31, 1905. Of the Acts passed, 53 are classed as Public and the residue as Private. In the United Kingdom, 20 of the Public Acts would be classed as local and personal.

ance of witnesses and the production of documents before any person who is authorised by a foreign Court of competent jurisdiction to take evidence on commission.

Temperance Reform (No. 22).—This Act makes various small amendments to the Liquor Licence Act. It also provides that hotels licensed for the sale of liquors must, in cities, have at least fifteen properly equipped bedrooms, or such a number as the chief licence inspector shall consider adequate to public requirements. Every hotel must have a private sitting-room separate from the bar-room.

Municipal Government.—Nos. 25-30 make various amendments to the Municipal Act and the Municipal Boundaries Act.

Water Transit (No. 43).—This defines the rights of the public over inland waterways. Everybody, subject to the provisions of the Act, has the right to float or transmit saw-logs and all sorts of timber and craft down the rivers and creeks during the spring, summer, and autumn freshets. The same right attaches to waters which are not capable of being so used as soon as they are made suitable for that purpose. Persons driving saw-logs, etc., down-stream have the right to go along the banks of the stream to assist the passage of the timber by any of the means usual among lumbermen.

Appropriation (Nos. 46 and 47).—These provide $2,101,915.63 for the government of the Province up to December 31, 1905.

4. NEW BRUNSWICK.[1]

[*Contributed by* H. Stuart Moore, Esq.]

Acts passed—92.

Appropriation (Nos. 1 and 2).—These provide $367,036 for the expenses of the government of the Province, and for the upkeep of roads and bridges and other public works until December 31, 1905.

Insurance (No. 4).—The Life Insurance Act applies to every lawful contract of life insurance now in force, or to come in force. It requires that all the conditions and terms of the contract shall be set out in the policy. A policy cannot be avoided for inaccuracy of any statement in the application therefor unless such be material to the contract. An error in the age of the assured, when material, if made in good faith, does not avoid the policy, but the assured can only recover as for a policy made on his correct age. Persons of full age of twenty-one years are deemed to have an unlimited insurable interest in his own life. The Act also makes various

[1] The third session of the fourth Legislative Assembly commenced on March 9, and ended on April 15, 1905. Of the Acts passed, 34 are classed as Public, 38 as Local, and the residue as Private. In the United Kingdom, 10 of the Public Acts would be classed as local and personal.

provisions for the transfer of policies and the payment of claims to the rightful recipients.

Automobiles (No. 6).—The motor-car, as in other countries, has called for special legislation. In this Province cars must be registered and carry a number, and the chauffeurs also have to be registered and must wear a badge with their number pinned upon a conspicuous part of their clothing. Motors must not go at a greater speed than is reasonable having regard to the traffic, or in any event on a public highway, where the contiguous territory thereto is closely built up, at a greater rate than a mile in eight minutes, or elsewhere in a city, town, or village at a greater rate than one mile in five minutes. Outside such places the rate is not to exceed one mile in four minutes.

Factories (No. 7).—The Factories Act, 1905, prescribes the conditions upon which young persons of either sex may be employed. As a rule females cannot be employed for more than ten hours a day, exclusive of meal hours, or more than sixty hours in one week. Provision is also made as to the fencing of dangerous machinery, the health of employees, and prevention of and escape from fire. Inspectors can be appointed from either sex to see that the Act is enforced.

Immigration (No. 13).—Indentures of apprenticeship made in the United Kingdom with respect to infants are valid in the Province. This Act regulates the guardianship of children brought from abroad.

Amending Acts.—Nos. 21, 22, and 23 amend various statutes relating to the administration of justice. No. 26 amends the Liquor Act, and No. 27 the Protection of Game Act. This Act varies some of the close seasons, and also makes it an offence for non-residents of the Province to hunt moose, caribou, or deer without being in charge of a guide registered under the Act. Only persons resident in the province can be registered as guides. No. 29 amends the Highways Act, 1904. It also defines the rule of the road for persons driving draught animals—viz. when meeting, each to keep to the left of the centre of the highway, and when overtaking, the overtaking person is to keep to the right, and the overtaken person to keep to the left.

5. NORTH-WEST PROVINCES.

There was no legislation in 1905.

6. PROVINCE OF ONTARIO.

[*Contributed by* JAMES S. HENDERSON, ESQ.]

Acts passed—134, of which 96 were Local or Private.

Provincial Loans.—No. 2 enables the Lieutenant-Governor in Council to create a permanent provincial stock to be known as Ontario Government

Stock, which is to be personal property, and chargeable and payable out of the Consolidated Revenue Fund of Ontario.

Elections.—No. 4 amends the Ontario Election Act in certain details.

Executive Council.—No. 5 enables the Lieutenant-Governor to appoint a member of the Executive Council to hold office, and be designated the President of the Council.

Succession Duty.—No. 6 amends the Succession Duty Act. Among the definitions for the purposes of this Act may be noted that of "child," which is to include any person adopted before the age of twelve by the deceased as his child or any infant to whom the deceased, for not less than ten years immediately prior to his death, stood in the acknowledged relationship of a parent. It also defines the debts that may, and those that may not be deducted in determining the dutiable value of the deceased's property. Estates not exceeding $10,000 are exempt, as is also property devised or bequeathed for religious, charitable or educational purposes to be carried on by a corporation or person domiciled in the Province. Property passing under a will, intestacy or otherwise, to or for the use of a father, mother, husband, wife, child, daughter-in-law or son-in-law of the deceased is also exempt where the aggregate value does not exceed $50,000. The Act describes the various kinds of property liable to duty; it also prescribes the scale of duty. In case an executor or administrator, in order to escape payment of duty, distributes any part of the estate without bringing the same into the Province, he is to be liable personally to pay the amount of the duty which would have been payable had the assets so distributed been brought within the Province.

Mines.—No. 9 amends the Mines Act by providing, *inter alia*, that no land shall be sold for mining purposes in any forest reserve.

Statute Law Amendment.—No. 13 amends the law in various particulars.

Legislative Assembly.—S. 2 provides that a person holding the office of public school inspector is not ineligible as a member of the Legislative Assembly.

Judicature.—S. 4 enables the Lieutenant-Governor in Council to appoint from time to time a registrar and assistant registrar of the Court of Appeal; such officers are to receive no fee or emolument save their salary.

S. 5 enacts that to provide a fund to enable a reduction to be made to litigants for copies of evidence taken in shorthand at trials or on references a fee of $2 is to be paid in every civil case in the High Court entered for trial.

S. 6 provides that where a jury is to be summoned in any case in which a municipality partly or wholly within the jurisdiction of the Court is a party, and the jury would, if selected in ordinary course, be composed of ratepayers of that locality, the Judge may, upon the application of any party, order the jury to be summoned from some other municipality within the Court's jurisdiction.

Jurors.—S. 8 enables a county council to increase the fee allowed to jurors to any sum not exceeding $3 a day.

Registry Act.—S. 12 amends the Registry Act by providing that before any will or exemplification of any probate or letters of administration with will annexed under the seal of any Court is registered, an affidavit must be produced showing that an account had been filed pursuant to the Succession Duty Act.

Conditional Sales of Chattels.—S. 14 provides that where chattels, which have been sold on special conditions, are affixed to realty they are to remain subject to such conditions as fully as they were before being so affixed, but the owner, or mortgagee, or other incumbrancer on such realty can retain the goods and chattels upon payment of the amount due thereon.

Immigration Aid Societies Act.—S. 16 repeals this Act.

Sleigh Runners.—S. 29 provides that no person shall use on any public highway, except within the limits of a city, any sleigh or other vehicle upon runners drawn by horses or other animals (except cutters) manufactured after December 1, 1906, unless the same is so constructed that the distance between the outer edges of such runners at the bottom is not less than four feet.

Factory Inspectors.—S. 30 enacts that a factory inspector may, if called as a witness, object when so directed by the Attorney-General, or by a member of the Executive Council, to give evidence as to any factory inspected by him in the course of his official duty.

Surrogate Courts.—No. 14 empowers the Surrogate Court Judge on passing the accounts of an executor, etc., to make full inquiry as to the whole property of the deceased, and the administration and disbursement thereof, in as full a manner as can be done in the Master's Office under an administration order.

Coroners.—No. 15 imposes the duty on the council of every city and town to provide a suitable room for the holding of inquests; and on failure of this duty, the coroner is authorised to secure a room for the purpose and charge the expense to the municipality.

Pharmacy.—No. 16 amends the Pharmacy Act. It makes certain alterations in the Pharmaceutical Council, as to the times for holding examinations, etc. No drugs or medicines except patent or proprietary medicines and except certain named ones may be sold, except by persons registered under the principal Act. No sign, title, or advertisement, may be used by an unregistered person which is calculated to lead people to infer that the person using it is registered.

Loan Corporations.—No. 19 amends the Act on this subject by providing that the Attorney-General of the Province may on a proper application to him appoint a competent person to make a special examination and audit of the corporation's books, accounts, and securities, and to inquire into the

conduct of the business of the corporation generally. The examiner so appointed may summon witnesses and take evidence upon oath. The examiner is to report the result of his examination to the Attorney-General in writing.

Burial Grounds.—No. 20 empowers trustees of burial grounds to make regulations for the laying out, care, and maintenance of the grounds, etc.

Municipalities.—No. 22 amends the Consolidated Municipal Act, 1903, as to adding territory to cities or towns, as to appointment of election officers, elections, etc. By-laws may be passed by the Council of any city having a population of 100,000 or over, authorising the city architect to permit deviation from building by-laws in special cases. By-laws may also be passed for regulating the delivery or exposure for sale of meat in streets or markets; requiring conveniences to be erected by builders in connection with buildings or public works; for collecting ashes, refuse, and garbage at expense of owners, lessees, or occupants of real property. Certain alterations are also made as to the constitution and duties of boards of police trustees.

Public Libraries.—No. 26 provides that no person who is not a British subject shall be appointed a member of the Board of Management of a public library.

Highways.—No. 27, *inter alia*, provides as to the application of money paid in commutation of statute labour; roads receiving aid under the Act are to be deemed county roads, and are to be maintained by the corporation of the county in which the roads are situated.

Motor Vehicles.—No. 28 makes more stringent the law as to these. It requires motor vehicles to have securely fixed to the back of the body of the car the number of its permit, the number to be in plain figures not less than five inches in height. Lighted lamps are to be carried in front after dusk and on the glass of such lamps the number of the permit is to be displayed. Motor vehicles are not to approach within 100 yards of vehicles drawn by horses, or horses upon which any one is riding, or pass the same, at a greater speed than seven miles an hour. The owner of a motor vehicle for which a permit is issued is made responsible for any violation of the Act or regulations. When in any public place and not in motion, motor vehicles are to be securely locked or made fast to prevent them being set in motion. Licences may be revoked for breaches of the Act. In case of accident to any person through the frightening of a horse or other animal by a motor vehicle the onus of showing that there was no negligence on the part of the owner or driver of the motor vehicle is cast upon such owner or driver.

Liquor Licences.—No. 30 by repealing certain words in a former Act makes it an offence to sell liquor to a minor, although it is supplied upon the written order of the minor's parent, guardian, or master.

No. 31 provides for the granting of warehouse licences to brewers or distillers. This authorises the storage of unbroken packages of beers or

spirits manufactured by the brewer or distiller. Sales may take place from such warehouses.

Public Health.—No. 32 prohibits the keeping or storing of rags, bones, or other refuse in any building used as a dwelling, or upon any premises within a municipality unless in a building approved by the medical health officer.

Game.—No. 33 prohibits dealings in game or in the hides of certain deer during close time.

Toronto University.—No. 35 incorporates the University Residence Trustees and prescribes their powers. Real and personal property of the Board is exempted from provincial, municipal, or other taxation.

No. 37 is the University of Toronto Act. It sets out in the preamble that it is desirable that the University Trustees should be enabled to assist in the reorganisation of the Toronto general hospital so as to constitute it a provincial hospital in which clinical facilities may be provided for the medical faculty; and that it is further essential to provide new buildings for the accommodation of the department of physics, buildings for the department of forestry, etc. It then enables a grant not exceeding $30,000 per annum for a period not exceeding thirty years to be made to the Trustees for these purposes. Sums are allocated to the various schemes.

Institutions for Deaf, Dumb, and Blind.—No. 38 enables the Minister of Education to make periodical inquiry into the character and efficiency of these institutions.

7. PROVINCE OF QUEBEC.

[*Contributed by* EDWARD MANSON, ESQ.]

Acts passed—116, of which the greater part were local.

Organisation of Departments (No. 12).—This is an Act dealing with the various offices of State, the Ministry of Justice, of Lands and Forests, of Agriculture, of Mines and Fisheries, of Public Works and Labour, by way of amendment, etc., regulating appointments to the offices and defining the duties.

Licences (No. 13).—*Liquor.*—This Act amends the liquor licensing law in a number of particulars. Bringing intoxicating liquors into any mine is made an offence punishable with a fine of from $20 to $50.

Bowling Alleys.—A licence ($5) is required for each alley bed in a bowling alley.

Loan Offices.—A $5 licence is made necessary for keeping a loan office or private bank.

Billiard Tables.—A licence is required except in the case of clubs; $60 for a single table.

Commercial Travellers.—Non-resident commercial travellers, soliciting

orders for a person with no place of business in Canada, must take out a licence.

Taxes on Transfers of Securities (No. 15).—A stamp duty at the rate of two per cent. for every $100 is imposed on the transfer of shares, bonds, debentures, and debenture stock.

Inspection of Butter and Cheese Factories (No. 17).—The inspection of butter and cheese factories on behalf of the Ministry of Agriculture is to extend to every detail—the ice houses, machines, instruments, as well as the milk, butter, and cheese. Any interference with an inspector is punishable with a fine not exceeding $20.

Farmers' Clubs (No. 18).—A general meeting of the club is to be convened every year, at which lectures on agriculture are to be given. Such lectures are to be open to the public.

Incorporation for Religious Bodies (No. 21).—Numerous Protestant Congregations exist in the Province which own property, but have no charter. This Act provides an easy and inexpensive mode of incorporation by petition to Lieutenant-Governor in Council.

Minor Amending Acts deal with the following subjects:

Veterinary Surgeons (No. 26).

Railways (No. 27).

Unclaimed articles in the hands of carriers (No. 28).

Registry offices (No. 30).

Conciliation (No. 31).

8. NEWFOUNDLAND.

[*Contributed by* H. C. Gutteridge, Esq.]

Acts passed—23.

Trust Funds.—No. 3 is an Act passed to give effect to the provisions of the Imperial Statute 63 & 64 Vict. c. 62 (the Colonial Stock Act, 1900), so as to enable trust investments to be made in securities of the Colony. It provides for the payment out of the colonial revenues of sums payable to stockholders under a judgment, decree, or order of a Court of the United Kingdom. It also records the opinion of the Colonial Legislature to the effect that any subsequent statute which appears to the Imperial Government to injuriously affect such securities would be properly disallowed.

Foreign Fishing Vessels.—No. 4 enables justices of the peace and certain other persons to board and bring into port foreign fishing vessels which have purchased bait or tackle or supplies in the Colony or in colonial waters, or which have engaged or attempted to engage crews in the Colony. Such vessels are to be forfeited. This Act repeals 56 Vict. c. 6.

Banks.—No. 8 requires all banks transacting business in the Colony to

furnish annual statements to the Minister of Finance and Customs of their business in the Colony.

Pulp and Paper.—No. 10 confirms the agreement made between the Colony and the Anglo-Newfoundland Development Company, a company formed by Messrs. Harmsworth, of London, for the purpose of establishing pulp and paper industries in the Colony. By the agreement certain lands are leased to the company for a term of ninety-nine years at an annual rent of $2 per square mile. The company is to have the right to fell timber on the demised area at a royalty of 50 cents per 1000 feet, and such timber is to be manufactured into pulp or cut up into lumber. The company also receives the right to work minerals in return for a royalty of 5 per cent. of the net profit made. The Act obliges the company to spend $1,000,000 within twenty years in erecting mills to pulp timber. Some of the provisions of the Act are unusual. For instance, it gives the company power under certain circumstances to compulsorily acquire land, and provides that the forestry regulations of the company, when approved by the Governor in Council, are to have the force of law. The company are granted the option of renewing the lease at the expiration of the original term, and of every further term granted, by which means they appear to practically acquire the demised area in perpetuity.

Cruelty to Animals.—No. 15 amends No. 69 of the Consolidated Statutes (2nd series) by providing that under certain circumstances engine-drivers, train hands, and police constables may kill any injured animal which in their opinion, and in that of one other person present at the time, is fatally injured.

Forest Fires.—No. 17 repeals No. 76 of the Consolidated Statutes (2nd series) and contains elaborate regulations for the purpose of preventing forest fires.

Peat Industry.—No. 18 grants a bounty of 25 cents per ton on manufactured peat, and authorises the employment by the Government of an expert to examine and report upon the peat and bog areas of the Colony.

Telegraphs.—No. 21 empowers the Governor in Council to take possession of telegraphs when deemed expedient for the public service.

Minor Acts.—No. 1 authorises a loan of approximately $3,000,000.

No. 2 authorises a loan of £390,500 sterling under the Colonial Stock Acts 1877 to 1900, for the Telegraph Service of the Colony.

No. 5 amends the St. Johns Municipal Act, 1902.

No. 6 imposes a tax on express companies doing business in the Colony.

No. 7 imposes taxes on business transacted by telegraph and telephone companies within and in transit through the Colony.

No. 9 repeals the Revenue Act, 1901, and the Acts 2 Ed. VII. c. 26, 3 Ed. VII. c. 15, 4 Ed. VII. c. 18 in amendment thereof.

No. 11 authorises the Royal Trust Company to do business in the Colony, and repeals 4 Ed. VII. c .6.

No. 12 amends the Act 56 Vict. c. 11.

No. 13 amends the Education Act, 1903.

No. 14 amends No. 31 of the Consolidated Statutes (2nd series).

No. 16 incorporates the Institute of Accountants of Newfoundland.

No. 19 amends 59 Vict. c. 39.

No. 20 amends the Customs Act, 1898.

No. 22 grants certain retiring allowances.

No. 23 makes an appropriation out of the Consolidated Revenue Fund for the different branches of the Public Service.

X. WEST INDIES.

1. THE BAHAMAS.

[*Contributed by* HARCOURT MALCOLM, ESQ., *on behalf of the Bahamas Bar Association.*]

Acts passed (5 & 6 Ed. VII.)—24.

Supply (No. 1).—The Appropriation Act, 1906, grants £24,814 13*s.* 9*d.* for the performance of public works, etc., and for the reimbursement of various payments, etc.

Asylum (No. 2).—The Asylum Act, 1906, practically re-enacts the Asylum Act, 1904. A radical change, however, has been made by reverting to the arrangement, existing prior to 1876, of having a Lay Superintendent.

Sponge and Turtle Fisheries (No. 4).—The Sponge and Turtle Fisheries Act, 1906, makes it an offence for any master or seaman of a vessel to sell or dispose of any of the proceeds of the voyage otherwise than in the manner fixed in the agreement governing the voyage. It is a defence, however, if the person charged acted with a view to the benefit of the persons interested in the voyage, under pressure of some urgent necessity or emergency affecting the safety of the vessel or crew. He must, however, also prove that (1) he only sold or disposed of as much as was required for such necessity or emergency, and that (2) he reported the circumstances at the first opportunity to the person outfitting the vessel. It is also a defence if the person charged acted with the consent of the crew and master and was authorised in writing by the person outfitting the vessel for the voyage.

Trade Marks (No. 6).—The Trade Marks Act, 1906, is a transcript of the Imperial Trade Marks Act, 1905, together with certain provisions for the protection of trade marks derived from the Imperial Merchandise Marks Act, 1887.

The Registrar of Records is charged with carrying out the provisions of the Act. In cases of doubt and difficulty he can refer to the Attorney-General for directions. An appeal from the Registrar's decision lies to the Supreme Court.

Medical Practitioners (No. 7).—The Medical Act, 1906, makes it illegal, under a penalty of £100 for a first defence and £200, with or without six months' imprisonment, for a subsequent offence, for any one to practise medicine or surgery who is not registered under the Act. Registered practitioners are divided into two classes, qualified and unqualified. Qualified practitioners are (*a*) persons in the "Medical Register" of the United Kingdom, (*b*) persons holding a medical or surgical degree or diploma of any legally recognised university or institution in the Empire, and (*c*) persons holding a medical or surgical degree or diploma of any foreign legally recognised university or institution which is also recognised by the Governor in Council. Unqualified practitioners are such persons as may be possessed of skill in medicine or surgery and are licensed by the Governor in Council for a particular district. He must be satisfied that it is desirable in the interest of such district that such persons should be so authorised. The fiat of the Attorney-General is required before any one can be prosecuted under the Act. The onus of proving registration is on the defendant. The Act does not apply to midwives.

Tariff (No. 9).—The Tariff Amendment Act, 1906, consolidates the various Acts since 1895 which have amended the Tariff Act, 1895, and adds bees and dynamite to the table of exemptions.

Billiard Rooms (No. 12).—The Billiard Rooms (Repeal) Act, 1906, repeals the obsolete Billiard Rooms Act, 1863, which required a £10 licence to enable any one to keep a public billiard room and prescribed various penalties and restrictions in connection with the keeping of such places.

Post Office Savings Bank (No. 13).—The Post Office Savings Bank Act, 1906, makes provision for transferring any account to or from the Post Office Savings Bank of the Colony from or to any Post Office Savings Bank either in the Empire or in a foreign country. Any amounts transferred must not exceed the total limit of £200 on June 30 of any year.

Any excess of assets of the Post Office Savings Bank beyond 10 per cent. of the total liabilities is to be considered profit and may be transferred to the General Revenue.

Police Regulations (No. 15).—The Police Regulation Amendment Act, 1906, defines the word "animal" as meaning "any animal of any species whatsoever, whether wild or domesticated and whether a quadruped or not."

Official Surveys (No. 16).—The Surveys Act, 1906, authorises the Surveyor-General or any one acting under his directions to enter upon private land and to do all necessary acts in connection with laying out any road authorised by the Legislature or for making any surveys authorised by the Governor in Council for proposed roads. In the out-Islands an order of the Magistrate is necessary.

Expiring Laws (No. 17).—The Expiring Laws Continuance Act, 1906, continues for five years seven Acts relating to the Board of Works for the Island of New Providence.

Official Contracts (No. 18).—The Official Contracts Act, 1906, declares that any contract entered into by any public officer, other than the officers of the Legislative Council or the House of Assembly, shall, unless a contrary intention appears, be deemed to be made for and on behalf of the Crown. Such contracts may be enforced by proceedings taken on behalf of the Crown by such public officer or his successor in office for the time being in the name of his office.

Magistrates (No. 20).—The Magistrates Amendment Act, 1906, permits the deposition of an out-Island public physician to be read at the subsequent trial at the sessions. The magistrate's certificate that the deponent is a public physician is *primâ facie* evidence of that fact. The Chief Justice may at any time, however, require the personal attendance of the public physician.

Manufactories (No. 21).—The Manufactories Encouragement Act, 1906, exempts from the payment of import duty all machinery, tools, fixtures, and supplies used in connection with the erection and maintenance of factories for the manufacture, preservation, packing, or other preparation for sale or export of any agricultural product of the Colony. Factories must be registered to obtain the benefit of the Act. Vessels entering with cargoes consisting exclusively of material for such factories, or clearing with cargoes consisting exclusively of agricultural products of the Colony, are exempted from the payment of light and tonnage dues.

Telephones (No. 22).—The Telephone Act, 1906, provides for the establishment of a telephone system in the Island of New Providence. The Governor in Council is the telephone authority, and has power to make general regulations, etc. A loan of £1200 is made from the Public Treasury and bears interest at the rate of 2½ per cent. per annum. Provision is made for the appointment of a superintendent and operators. Applications to prevent interference by private telephone wires are to be made to the Stipendiary and Circuit Magistrate. Imprisonment for a period not exceeding six months is the penalty provided for damage to wires, etc.

Agriculture (No. 23).—The Board of Agriculture Act, 1906, re-enacts the Board of Agriculture Act, 1904, and the Board of Agriculture Amendment Act, 1905—the number of the Board is increased to nine and the

annual grant to £600. The Board is given power to appoint sub-committees.

Place of Origin.	Number of Bills Introduced.	Number of Bills that became Acts.
1. LEGISLATIVE COUNCIL.		
Private members . .	1	1
2. HOUSE OF ASSEMBLY.		
Government . . .	23	20
Select Committees . .	2	2
Private members . .	3	1

2. BARBADOS.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Acts passed (1905)—31.[1]

Marriages (No. 1).—The Marriage (Amendment) Act, 1905, makes the issue of a licence from the Colonial Secretary's office for the marriage of a minor (not being a widower or widow) conditional upon the production of a statement in writing by the parents, or guardians, or, these failing, the nearest relative, that such marriage is with their, his, or her consent. The Colonial Secretary has power to require an affidavit to verify the identity of the parties to be married and the statement giving the necessary consent.

Friendly Societies (No. 2).—The Friendly Societies Amendment Act, 1905, requires every registered society for the purposes of audit to send all the necessary books, accounts, and vouchers to the offices of the Auditor nominated by the Registrar, and, in other minor details, amends the principal Act of 1904.

Agricultural Loans (No. 3).—The Agricultural Aids Act, 1905, interprets for the purposes of the Act "land" as sugar plantations or other realty cultivated for an annual crop; "owner" as any person for the time being legally charged with such cultivation; and "receiver" as the person appointed by any Court of competent jurisdiction in the United Kingdom or in the island to take charge of and manage land in the island.

The Act is in three divisions: (1) Loans to Owners; (2) Loans to Receivers; and (3) General Provisions. It provides that all loans by any person to an owner for the purpose of the cultivation and upkeep of

[1] Acts are passed by the Governor, the Council, and the Assembly of the island, and are numbered consecutively for the calendar year. Of 32 Acts passed, one was not sanctioned.

land together with interest shall, subject to the provisions of the Act and of the Plantation-in-Aid Acts, be a prior and first charge on the current year's crops, and, unless otherwise agreed, the owner shall be personally liable for the loan. No loan on the security of a cane crop shall be made under the Act prior to June 1 in the year preceding the reaping of the crop, except for the purchase of manure between January 1 and June 1 in such preceding year. Lenders are not to be responsible in respect of their security for any misapplication by the borrowers of the money lent; and borrowers may act by their constituted attorney in the island.

Borrowers are to give certificates of the amount borrowed, and these are to be recorded by the Registrar in the Owners' Loan Book.

Lenders may inspect the crops forming their security, and such crops, unless otherwise agreed by owner and lender, are to be sold in the island and the proceeds applied in or towards satisfaction of the amount borrowed, and any breach of these provisions by owner or his attorney is made a felony punishable by imprisonment.

Provisions are made for the security of lenders, enabling them to enter upon the lands and cultivate and reap the crops; to require accounts from the borrower as to application of the money borrowed; and to enforce delivery of such account by proceedings before a police magistrate.

Persons holding securities on land on which advances under this Act have been made may take proceedings for the recovery of moneys due to them, but advances under this Act are to have precedence over all other claims whatsoever in respect of the crops on which such advances were made. Receivers can obtain advances under the Act with the sanction of the Court for the upkeep of the plantations.

Repayments of loans are to be endorsed on the certificates of loan given by the borrowers. Such certificates during the currency of the loan are transferable either absolutely or by way of security, and such transfers are to be entered by the Registrar in Borrowers' Loan Book against the entry of the certificates of the loan.

The Act repeals the previous Agricultural Aids Act and all the Amendment Acts.

Bank Holidays (No. 4).—The Bank Holidays Act, 1905, fixes the following days as Bank Holidays: January 1,[1] Easter Monday, Whit-Monday, May 24[1] (Victoria Day), the first Monday in August and October, the Sovereign's birthday (the day appointed for its celebration), December 26.[1]

All Bank Holidays are to be kept at all banks, public offices, and public schools. No person shall be allowed to attend at places of business; but several exceptions are made which include (*inter alia*) hotels, boarding-houses, clubs, railway, tramway, telegraph, telephone, and gas companies, plantations, drug shops.

[1] If these days fall on a Sunday, the Monday following is a Bank Holiday.

All Law Courts are to be closed on Bank Holidays.

Larceny (No. 8).—Repealed by subsequent Act (No. 22).

Pauper Immigration (No. 11).—The Immigration of Paupers (Prevention) Act, 1905, requires all masters of ships before the landing of his passengers to deliver to the Harbour Master a list of all his passengers (if a sailing vessel) and of his second and third-class passengers (if a steamship), and thereupon the Harbour Master shall inquire as to the physical, mental, and pecuniary condition of such passengers, and those of them as shall be deemed unable to maintain themselves shall by notice in writing affixed to the mast be forbidden to land, unless a resident in the Colony guarantees to the local government and poor-law guardians the repayment of any charges incurred on account of such immigrants within five years of their landing. Penalties for breach of the provisions of the Act are imposed, and power is given to police magistrates to have passengers landing against the provisions of the Act arrested and conveyed back to the ship. Natives of the Colony and persons rescued at sea are exempted from the Act.

Trade (No. 12).—The Trade (Amendment) Act, 1905, allows on the export of imported manures mixed in the Colony a drawback of the import duty. The importation of seeds, plants, or berries coming from places where plant disease prevails can only take place under such conditions as the Governor in Executive Committee shall order, and until such conditions are complied with the importation is prohibited.

Criminal Evidence (No. 14).—The Criminal Evidence Act, 1905, enables every person charged with an offence, and the wife or husband of such person, to be a witness for the defence, provided (*a*) that the person charged shall not be a witness except upon his own application; (*b*) that the failure of the person charged, or of his or her wife or husband, to give evidence, shall not be commented on by the prosecution, or the judge, or have any weight attached to it; (*c*) that the wife or husband of the person charged shall not be called as witness, except upon the application of the person charged; (*d*) that nothing in the Act shall compel husbands and wives to disclose communication made by the one to the other during marriage; (*e*) that persons charged on giving evidence may be cross-examined without restriction as to criminating questions; (*f*) but not in respect of offences other than that charged, or as to character, unless proof of the commission of or conviction for such other offence is admissible evidence of his being guilty of the offence charged, or unless he has tendered evidence of good character, or given evidence against any other person charged with the same offence; (*g*) that every witness called pursuant to this Act shall give evidence from the witness-box; (*h*) that nothing in the Act shall affect the right of a person charged to make a statement without being sworn. If the person charged is the only witness for the defence, he shall be called after the close of the evidence for the prosecution.

The wife or husband of a person charged with offences under the Vagrancy Act, the Married Women's Act, Offences against the Person Act, the Brothels Suppression Act, the Prevention of Cruelty to Children Act, and the Bastardy Act may be called as witness for the prosecution or defence without the consent of the person charged.

Sugar Plantations (No. 17).—The Plantations Further-in-Aid Act, 1905, gives the Barbados Executive Committee borrowing powers, to the amount of £200,000, in addition to the borrowing powers in the Plantation-in-Aid Acts, 1902 to 1904. The loans made to the Executive Committee are secured, and the amounts so raised are to be applied, in like manner as is provided by the principal Act, with such variations as to dates as are necessary, and with a further variation that the loans are made repayable by four instead of five annual instalments. Such loans to owners are to be applied in payment of expenses of cultivation incurred subsequent to June 1, 1905, and the payment of artificial manures and taxes payable prior to June 1, 1905. The advances so made are a first lien and charge against the plantation and the crop of 1906, except as to liens and charges created under the Plantations-in-Aid Acts, 1902 to 1904, and except as to advances which, prior to June 1, 1905, have been expended in artificial manures or payment of taxes, and further except as to advances under the Agricultural Aids Acts made on and after June 1, 1905, and prior to loans under this Act. Loans to receivers appointed by the Court are also made a first lien and charge against the plantation, except as to those created under the Agricultural Aids Acts prior to date of this Act, and under the Plantations-in-Aid Acts, 1902 to 1904. The Act provides penalties against owners and receivers for failure to comply with the provisions of the Act, and power to effect proper insurance against fire is given to the Executive Committee.

Quarantine (No. 19).—The Quarantine Act, 1905, gives effect to the recommendations of a Conference of the several British West Indian Colonies on the question of quarantine which were embodied in the West Indian Intercolonial Sanitary Convention of 1904 and Regulations based thereon, both the Convention and the Regulations thereunder being set forth respectively in the schedule to the Act.

Police Magistrates (No. 20).—The Police Magistrates Act, 1905, is a comprehensive enactment of fifty-one sections and schedules of forms. For the purpose of the Act the island is divided into six districts under the jurisdiction of police magistrates appointed by the Governor, and every police magistrate is made *ex officio* a justice of the peace for the Colony and must be resident within his district. The Act contains detailed provisions as to the jurisdiction and powers of the police magistrates, publicity of proceedings except in certain cases of indictable offences, where a discretion as to publicity is given to the magistrate for the better securing the ends of justice. Complainants and defendants have

a right of appeal from the decision of a police magistrate and are entitled to copies of the proceedings for purpose of such appeal.

Larceny (No. 22).—The Larceny (Amendment) Act, 1905, subjects to fines or imprisonment all persons convicted of stealing trees, plants, roots, and other vegetable productions.

Wireless Telegraphy (No. 25).—The Wireless and Submarine Telegraph Act, 1905, forbids the laying of any cable or the installation of wireless telegraphy within the territorial jurisdiction of the Colony except under and in accordance with an Act of the Legislature, and subjects persons acting in contravention of the Act to penalties and gives power of removal of unauthorised cables or wireless telegraph stations.

Parish Constables (No. 26).—The Parish Constables (Amendment) Act, 1905, is consolidated with the principal Act, 1900, and provides for the remuneration and allowances to constables in the performance of their duties, and makes prosecutors liable for fees to constables in cases where offenders are discharged for want of prosecution or on the merits. Persons assaulting or obstructing constables in the performance of their duties are made liable on conviction to imprisonment or to a fine, or at discretion of magistrate to prosecution by indictment before the Court of Grand Sessions.

Tercentenary of Settlement of Barbados[1] (No. 29).—This Act, after reciting that in July, 1605, the crew of the English ship *Olive Blossom* landed and took possession of the island for their Sovereign by erecting a cross and cutting on the bark of a tree the letters and words "James K. of E. and this island," and although such persons made no settlement on the island, yet such act of possession was never challenged by any other Power, and so Barbados remained in the constructive possession of the Crown until actual possession was taken by Englishmen who arrived in the ship *William and John* some twenty years afterwards, and further that the island for three hundred years had never been out of possession of the Crown of England or subject to foreign rule, and that it was fit and proper to mark the accomplishment of the said tercentenary period, declared November 30, 1905, as a public holiday, and for such purpose extended to such day the provisions of the Bank Holidays Act, 1905, and of the Bills of Exchange Act, 1893.

[1] This Act is of historic interest and may be deemed evidence of the fact that Barbados is a Colony acquired by settlement and possessed of all the legal and constitutional incidents thereto pertaining. Its inhabitants are, and have always been, British subjects possessed of English common law rights and, as British subjects, under the direct protection of the Sovereign as correlative to their primary allegiance expressed in the reservation in the Latin charter of Charles the First to Lord Carlisle by the following words: "Salvâ semper fide et ligeantiâ, ac dominio directo, nobis hæredibus et successoribus debitis." The land tenure is feudal and according to English common law and subject to the Statute of Uses and the Conveyancing Act of the Colony. At the present date all conveyances and mortgages are subject to the requirements of registration in the Colony. The personal liberties and rights of every inhabitant are the same as in England, without distinction of colour.

3. BRITISH GUIANA.

[*Contributed by* Sir Crossley Rayner, K.C., A.G.]

Ordinances passed—32: Public General, 30; Private, 2.

The more important of the Public General Ordinances are the following:

Spirits (No. 1).—This Ordinance consolidates and amends the law of the Colony with regard to the manufacture and sale of spirits. Its main objects are the better regulation of distilleries on sugar estates and the suppression of illicit distilling. The first object is sought to be attained by closer Government supervision over distilleries than formerly existed, and the Ordinance requires that stills shall be constructed so that the spirit flows into a locked vessel, of which a Government official alone has the key, and access to which can only be obtained in his presence. Illicit distilling, or the "bush-rum trade," as it is locally called, from its being carried on in the bush or uninhabited parts of the Colony, has risen to large proportions in the last four or five years, and has seriously affected the revenue. The Ordinance contains some special provisions for dealing with it. It is made a misdemeanour to distil spirits without a licence, and no one is allowed to make or repair a still unless licensed to do so. Any person found in possession of, or near to, an illicit still is presumed to be the owner of it unless he proves the contrary, and heavy penalties are imposed on persons found in illegal possession of spirits. These provisions are somewhat drastic, but experience has proved the necessity for them.

Indictable Offences Procedure (No. 3).—This Ordinance amends the law relating to juries, the most important amendment being the abolition of payment to jurors who live in the town where the Court sits, and a reduction of the amount paid to jurors who live away from the town. Formerly all jurors were paid for their services. In this Colony juries are confined to criminal cases; there is no trial by jury in civil cases.

Customs (No. 4) and **Tax** (No. 5) are the two Ordinances passed annually by the Combined Court, under the authority of which the customs duties and inland revenue of the Colony are levied and collected.

Official Receiver (No. 6).—In this Colony there was formerly an official called the Administrator-General, who took possession of and administered the property of persons absent from the Colony who left no one empowered to represent them, who administered the estates of persons dying intestate, who was *ex officio* guardian of minors, and who was also the Official Receiver in Bankruptcy. It was considered to be no part of the duty of the State to protect the interests of persons who could protect themselves, and as the office involved considerable expenditure from the public revenue, it was decided to abolish it, and accordingly this Ordinance was passed for that purpose. Provision, however, had to be made for the duties which

the Administrator-General performed under the Bankruptcy Law, and the Ordinance therefore provides for the appointment of an Official Receiver, who is to perform under the Insolvency Ordinance, 1900 (No. 29 of 1900), the duties hitherto performed by the Administrator-General. Provision is also made empowering the Court to appoint him to be the guardian of minors where no private person can be found to act, but the care of absentees' property and the administration of intestates' estates is for the future to be left, as it is in England, to those interested to protect their own interests. By an Ordinance passed later in the year (No. 24) the Official Receiver is appointed to administer the estates of certain East Indians when the estates are of small value.

Statute Laws Revision (No. 7).—This is an "omnibus" Ordinance, which makes a number of small amendments in various Ordinances not of sufficient importance to form the matter of separate Ordinances. An Ordinance of this nature is usually passed each year.

East Indian Settlements Regulation (No. 8).—In the year 1901 an Ordinance was passed to provide for the establishment of settlements for East Indians who, having arrived here as indentured coolies, had finished their period of indenture, and had elected to stay in the Colony instead of returning to India. These settlements were under the management and control of the Immigration Department. It was found, however, impossible to keep the settlements purely East Indian, as was originally intended, as some of the settlers sold their holdings to negroes and persons of other races, which, as the holdings were their own property, they had a right to do. There was also no reason for maintaining a form of local government for the East Indian inhabitants of the Colony different from that applicable to the rest of the Colony, which is supervised by the Central Board of Health under two Ordinances dealing with public health and village administration, and accordingly this Ordinance was passed to repeal the Ordinance under which the settlements were constituted, and to provide for their future management under the general local government law of the Colony.

Signatures to Petitions (No. 10).—This Ordinance makes it an offence for any one to append the name of any other person to any petition or other document without his consent, and requires the person who appends the name or mark of any other person to a document to certify on the document that it was read over and explained to that person, and that he approved of it. An exception is made in favour of documents prepared for the purpose of legal proceeding by legal practitioners. The object of this Ordinance is to secure the genuineness of letters and petitions written for illiterate persons, and also as some protection against the fraud and extortion practised on illiterate persons by those whom they employ to write documents for them. There are a number of semi-educated persons in this Colony who make a living by writing letters and documents for

illiterate persons. Many of these are unintelligible, and some contain untrue and scandalous matter, which is usually repudiated by the person in whose name it is written. The writer is not always easy to find, and when found, generally denies he wrote the document.

Contagious Diseases of Animals (No. 12).—This Ordinance provides for the compulsory inoculation of animals against anthrax, whenever that disease affects any part of the Colony, and when the medical authorities think it necessary.

Roads (No. 13).—This Ordinance consolidates and amends the law relating to the maintenance of the public roads of the Colony. Formerly the roads were under the charge of the Treasury Department, but this Ordinance transfers them to the Public Works Department. The Ordinance keeps in force an old arrangement under which the sugar plantations maintain those parts of the public roads which pass through them, but all other roads are maintained at the expense of the public revenue.

Quarantine (No. 14).—This Ordinance was passed to give effect to the recommendations of a Conference which met in Barbados in 1904, composed of representatives from this Colony and various West Indian Islands, to consider the possibility of enacting a uniform quarantine law for the whole of the West Indies, so as to avoid confusion and injury to commerce, which resulted from every Colony having different regulations on the subject. The Conference drafted a set of model quarantine regulations, which it recommended all the Colonies to adopt. This Ordinance adopts them for this Colony, and they are enacted in a schedule to the Ordinance as the Quarantine Regulations of the Colony.

Lepers (No. 15).—This Ordinance repeals and re-enacts in part with amendments the Leper Ordinance of 1870, and provides both for the care of lepers and for the taking of precautions against the spread of leprosy, which unfortunately is greatly on the increase in the Colony. It provides that lepers wandering abroad, and others who cannot be properly isolated in their own homes, shall be sent to the Leper Asylum. Provision is made for householders and employers of labour reporting cases of leprosy to a medical officer. Certain trades, in which articles of food or clothes have to be handled, are prohibited to lepers, and provision is made for preventing the landing of lepers in the Colony. Power is given to declare part of the Leper Asylum to be a prison, in which lepers sentenced to imprisonment may be confined, so as to avoid the risk of lepers carrying contagion to an ordinary prisoner. A similar provision is made for lunatic lepers, so as to prevent the risk of contagion to persons in the ordinary lunatic asylum.

Lunatic Asylum (No. 16).—This Ordinance repeals an Ordinance passed in 1903 for the management of the lunatic asylum, and re-enacts it with amendments. The part dealing with the management of the asylum is practically unchanged, but the provisions dealing with the examination of

suspected lunatics and their committal to the asylum have been altered. Formerly the certificate of two medical men that a person was a lunatic was sufficient authority for his detention in the asylum, but under this Ordinance an inquiry before a magistrate, and an order from him, as well as medical certificates, are required before a person can be admitted to the asylum. Provision is made for the admission of urgent cases which cannot wait for a magisterial inquiry, but a full report has to be made within four days to the Surgeon-General, who can order a further examination. Provision is made empowering the Governor to order the examination of any lunatic in the asylum, at the request of any person interested in the lunatic.

Travelling Magistrates (No. 17).—This Ordinance was passed to facilitate the administration of justice in the more remote parts of the Colony, in places far removed from where the ordinary Courts sit. The Ordinance empowers the Governor to appoint travelling magistrates, who are to have the powers of an ordinary stipendiary magistrate, and who may exercise those powers when necessary. They are to be governed by all the laws applicable to stipendiary magistrates, with the exception that in case of appeals twenty-eight days extra is allowed beyond the usual time for appealing, and for doing all acts in relation to such appeal. The persons appointed travelling magistrates are Government officials whose duties take them into the interior of the Colony, and who are thus able, when necessity arises, to administer justice on the spot, instead of compelling persons to go, sometimes, many days' journey to the place where the ordinary stipendiary magistrate sits.

Service of Process (No. 18).—This Ordinance enables writs and other process of the Supreme Court to be served outside of Georgetown by the bailiffs of the local Magistrates' Courts, and thus to avoid the expense incurred in sending the process servers of the Supreme Court (called "marshals") to places at long distances from Georgetown.

Summary Jurisdiction: Married Women (No. 19).—This Ordinance, which is practically a copy of the Summary Jurisdiction (Married Women) Act, 1895, enables magistrates to make separation orders, and orders for maintenance, against husbands who have deserted or ill-treated their wives.

Excise Regulations (No. 21).—This Ordinance empowers the Governor in Council to make regulations as the manufacture of articles upon which an excise duty is payable under the provisions of the Annual Tax Ordinance, so as to secure the revenue against loss. The Ordinance exempts from its provisions spirits and tobacco, which are governed by separate Ordinances. At present the only other articles upon which excise duty is charged are matches.

Immigration (No. 24).—This Ordinance amends the Immigration Ordinance, 1881, under the authority of which coolie immigration from India

is conducted. It provides that the Governor in Council may for proper cause order the removal of indentured immigrants from any estate, and may either transfer them to another estate or cancel their indentures. It also provides for the administration of the estates of East Indian immigrants by the Official Receiver (see Ordinance No. 6) who die before they have earned the right to a free return passage to India, in cases where the estate does not exceed £50.

Cattle-stealing Prevention (No. 25).—This Ordinance amends an Ordinance passed in 1877 dealing with cattle-stealing, an offence very rife in the Colony. It requires that all cattle shall be branded with the owner's brand, which brand must be registered with the police. It also requires all persons driving cattle from one part of the Colony to another to report themselves at every police-station they pass, and provision is made for any cattle-owner on payment of a small fee to be notified by the police whenever any cattle marked with his brand pass a police-station.

Elementary Schools: Teachers' Pensions (No. 29).—This Ordinance enables the Governor in Council to grant a pension to the principal teacher of any elementary school which receives a Government grant who has served as such for at least ten years, and is sixty years of age if a man, or fifty if a woman. The pensions vary from £10 to £36 a year, according to length of service.

Resumption of Crown Lands (No. 30).—This Ordinance empowers the Government to resume possession of lands which have been alienated by the Crown, but which have been abandoned by the grantee for eight years and upwards. Twelve months' notice is required to be given before possession of any land is resumed, and if within that time no claim is made, possession can be taken of it. If, however, a claim is made, and the Governor in Council after inquiry is satisfied that the claimant has made out a *primâ facie* right to the land, all further proceedings are stayed and the Crown does not resume possession. If, however, the Governor in Council is not satisfied with the claim, the matter is referred to the Supreme Court, which is empowered to determine the question. If the Court finds the claim made out, all further proceedings cease, but if it finds that the claim has not been established, the land vests in and can be resumed by the Crown. In order to guard against the possibility of any person being unjustly deprived of his land, provision is made for paying the appraised value of the land, so resumed, to any one who can establish within ten years a claim to it satisfactory to the Governor in Council.

Pilotage (No. 31).—This Ordinance abolishes compulsory pilotage in this Colony, and makes provision for the licensing of pilots who can be employed by those who require the services of a pilot. Regulations as to duties of pilots and the fees payable to them are contained in a schedule to the Ordinance.

Customs Duties—Date of Commencement (No. 32).—This Ordinance

provides for the commencement of Ordinances passed by the Combined Court to authorise the levying of customs duties. Customs duties in this Colony are only enacted for one year at a time, and an Ordinance is passed annually by the Combined Court for the purpose. Ordinances come into operation in this Colony on publication, and as there is necessarily a day or two's interval between the passing of the Ordinance in the Combined Court and its publication in the *Government Gazette*, importers have sometimes utilised this interval to take large quantities of goods out of bond upon which the duty has been increased and so cause loss to the revenue. This Ordinance therefore enacts that all duties enacted in any Customs Duties Ordinance shall be deemed to be payable from the day the Combined Court resolved itself into Committee of Ways and Means—that is, from the time the Court begins to discuss revenue matters, and when the public get the first intimation of what changes are likely to be made in the customs tariff. It provides for enforcing payment of any difference between the old rate of duty and any increased rate on goods passed through the customs in the interval before-named, and also provides for a refund of any difference in cases where the duty is reduced.

The two Ordinances of a private nature were: one (No. 20) safeguarding the pension rights of a public official transferred to another office, and one providing for the organisation and government of the Church of England in the Colony. This latter one, the Diocese of Guiana Ordinance (No. 27), repeals a number of Ordinances dealing with the Church of England, and provides for the government of the Church in the Colony by a Synod consisting of the clergy and lay representatives. It also provides for the incorporation of trustees, consisting of the Bishop and two persons elected by the Synod, to hold the property belonging to the Church; and the churches, schools, parsonages, lands, and all other real property of the Church are vested in the trustees

4. BRITISH HONDURAS.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed—9.[1]

Liquor Licences (No. 3).—The Licensing Ordinance, 1905, requires applicants to pay a fee of 10 dollars to a District Commissioner and submit a request in writing to him to summon a special licensing meeting of the licensing justices, who, after public notice of such meeting, shall meet and transact any business which they might transact at a quarterly licensing meeting.

Police (No. 4).—The Petty Offences Ordinance, 1905, empowers the

[1] Ordinances are passed by the Governor with the advice and consent of the Legislative Council and are numbered consecutively for the calendar year.

Governor in Council by notice in the *Gazette* to define the limits of a place and declare the same to be a town within the meaning of Chapter 36 of the Consolidated Laws.

Customs (No. 8).—The Customs Ordinance, 1905, requires the master of every ship arriving within the waters of the Colony and bound to any place, therein, whether laden or in ballast, to proceed to a port in the Colony and within twenty-four hours personally appear at the Custom House of such port.

Various rules and orders pursuant to Ordinances are printed with the Ordinances, and amongst these statutory orders is the following:

Education.—In assisted schools when the average attendance on seventy-two selected best days in the previous six calendar months shall be not less than seventy-five in town schools and fifty in country schools, the Board of Education may recognise one pupil teacher; and for a like average attendance of 110 in town schools and eighty-five in country schools, two pupil teachers; and for an average attendance of 145 or more (whether in town or country schools), three pupil teachers.

5. JAMAICA.

[*Contributed by* ALBERT GRAY, ESQ., K.C.]

Laws passed—33.

Customs and Excise.—The excise duty of 3*d.* on every gross of boxes of matches imposed by a Law of 1901 is raised to 6*d.* (Law No. 1). The customs duty on matches is by Law No. 2 altered and slightly raised, a duty of 1*s.* 9*d.* per gross boxes of fifty matches each being substituted for a duty of 3*s.* per gross boxes of one hundred matches each.

A customs duty of 1*d.* per gallon is charged on crude petroleum by Law No. 2.

By Law No. 3 a surtax of 6 per cent. is added to all import duties for one year. This Law was found to derange the existing relation between the excise and import duties on soap and matches, and accordingly by Law No. 6 an excise surtax of 2*d.* per 56-lb. box of soap, and of 9*s.* 9*d.* per 100 gross of boxes of matches (fifty sticks each) was imposed.

Protection of Emigrants.—The Law of 1902 (Journal of Comparative Legislation, N.S. No. XII. p. 440) is strengthened. Security against the costs of repatriation to the extent of 25*s.* must be given; and there must be a contract between the emigrant and the recruiting agent, approved by the Governor, that the 25*s.* shall not be deducted from his wages.

Power is further taken for the Governor in Council to make any agreement with a foreign Government with respect to the engagement of labourers

from Jamaica. If the agreement is published in the *Gazette* and in two local newspapers, and is approved by the Legislative Council, it is to have the force of law, even though it may be inconsistent with the Law of 1902 or the present Law.

By a subsequent Law (No. 33) the Governor in Council may fix and determine such sum in lieu of 25*s.* as he may deem sufficient to cover the costs of repatriation. This power extends to emigration to any proclaimed place, except the Republic of Panama.

Slander of Women.—Law No. 8 enacts that words spoken and published after the passing of this Law which impute unchastity or adultery to any woman or girl shall not require special damage to render them actionable.

Dental Practitioners.—The examination and registration of persons acting as dentists is provided for by a Law (No. 11) which is similar in its tenor to those passed in other Colonies (see Index to Journal of Comparative Legislation, N.S. Nos. XIV. and XV.).

Intestates' Estates.—Law No. 18 provides that when a person dies intestate with respect to any incorporeal hereditament or an equitable interest in a corporeal hereditament, the law of escheat is to apply in the same manner as if it were a legal estate in a corporeal hereditament.

Provision is also made, in the case of escheats, for the Governor to waive the rights of the Crown "on such terms whether for the payment of money or otherwise as may be specified in the warrant," and the Governor may convey the estate to the person or persons in whose favour the waiver is made; but such person is not capable of transferring the estate for seven years, during which period he is liable to an action at the suit of any person claiming interest in the estate.

Administration.—It is unlawful for any person to administer any part of an estate without obtaining probate or letters of administration within six months after the death or two months after the termination of any dispute touching the will or right to letters, which was not ended within four months after the death (No. 19).

The same Law makes provision for a return of excess duty where the estate is proved to be of less value than the estimate; also for the payment of excess duty where the contrary is proved.

Witnesses.—A witness, other than an expert, is not entitled to any allowance for his attendance (1) at summary trials; (2) at preliminary examinations; (3) at coroners' inquest; or (4) at fire inquiries (No. 21).

Immigration of Paupers.—If on the arrival of any ship there is on board any person not a native of or domiciled in Jamaica, who in the opinion of the Harbour Master or the Health Officer or the Senior Officer of Customs "is unable by reason of physical or mental infirmity to maintain himself, or who is likely, if permitted to land, to become chargeable to the funds provided for the relief of the poor," any such officer "shall by notice in writing to be served on the master of the ship forbid the landing of such

person." When such notice is served, the person cannot land unless some resident gives security covering any charges in respect of the man for one year (No. 25).

Motor-cars.—The Law (No. 26) which regulates the use of motor-cars is modelled on the English precedent, and need not be described in detail. There is, however, no speed limit.

Moneylenders.—The first section of the Usury Law (No. 27) follows s. 1 of the English Act of 1900. This is followed by a provision that when "the aggregate amount of interest paid or payable, or either, in respect of any money lent shall equal in amount" the principal, no further interest shall be recoverable in respect of the money lent or of arrears of interest at any rate beyond 8 per cent. on the money lent and arrears. Moreover, a borrower who has paid interest amounting in the aggregate to the principal sum may bring an action to be relieved from the transaction and for an account. The Court then has the same jurisdiction as in s. 1.

Marriage.—By Law No. 28 some amendments of the marriage laws are made, among which may be noted the substitution of a notice posted at the church door for seven days in lieu of publication of banns.

Public Undertakers.—If a person employed under contract of service in relation to water, gas, or electric supply, or in the carriage of freight or passengers, maliciously and without lawful excuse breaks his contract knowing that the probable consequence will be to deprive people of water, gas, or electricity, or to stop or interfere with the due carriage, he is made liable to a fine not exceeding £20, or imprisonment for three months. When any breach of service is likely to cause death or serious bodily injury or to expose property to destruction, the servant is liable to the same penalties. This Law (No. 30) is entitled (not altogether justly) the Protection of Property Law, 1905.

Quarantine.—Law No. 32 gives effect in Jamaica to the West Indian Inter-Colonial Convention of 1904. That convention provides for the immediate notification to all the adhering Colonies of the first appearance of any of the specified diseases—that is to say, cholera, plague, yellow fever, and smallpox. The notification is to be accompanied by particulars of date, locality, type of disease, number of deaths, and measures taken. Further information must be given weekly. The other Colonies must forthwith inform the infected Colony as to the precautions they are severally taking against arrivals from that Colony, and subsequently the relaxations of those precautions. Quarantine regulations in the latest form are annexed to the convention. The convention is to remain in force for five years subject to renewal for further periods of five years.

6. TURK'S AND CAICOS ISLANDS.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed—6.[1]

Custody of Infants (No. 2).—The Custody of Infants Ordinance, 1905, empowers the Judge of the Supreme Court of the Islands upon the petition of the mother of an infant under sixteen years of age to order that the petitioner may have access to such infant at such times and subject to such regulations as the judge may deem proper, or to order that such infant may be placed in the custody or control of the mother until such age under sixteen years and subject to such access by the father or guardian, as the judge shall deem proper.

Police (No. 3).—The Police Ordinance, 1905, regulates the constitution of the police force of the Colony; requires its members on appointment to take an oath of allegiance to the King, and that they will preserve the King's peace and discharge all duties faithfully according to law; power of arrest without warrant is given in certain offences. The examination into complaints against the police are provided for, and power is given for swearing-in special constables. In actions against the police it must be alleged and proved that the act complained of was done maliciously, and actions must be brought within two calendar months for acts done in the execution of duty.

Prisons (No. 4).—The Prisons Ordinance, 1905, repeals existing prison ordinances and provides that prisoners sentenced for twelve months and upwards may be sent to the General Penitentiary in Jamaica.

A Board of Prisons is constituted with power to make regulations for the Central Prison. Prisoners may be punished for certain defined offences by confinement in a punishment cell for any time not exceeding twenty-four hours, upon a diet of bread and water, or in an ordinary cell for any time not exceeding three days on like diet.

For other offences, such as repeated breaches of prison discipline, escaping or aiding prisoners to escape, other punishments are provided, but no prisoner shall be put in irons except in cases of urgent necessity and by order of the Superintendent of the Central Prison, nor kept there for more than twenty-four hours without an order from the Inspector of the Central Prison.

Customs (No. 6).—The Customs Tariff Ordinance, 1905, imposes specific import duties on certain scheduled articles and an *ad valorem* duty on certain articles not scheduled, whilst other articles enumerated in a schedule are exempted from duty. Power is given to exempt articles required for the exclusive use of any local industry from all duty with the consent of the Governor-in-Chief.

[1] Ordinances are passed by the Legislative Board and are signed by the President and Clerk of the Board.

7. TRINIDAD AND TOBAGO.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed (1905)—38.[1]

Revenue Stamps.—The Stamp Ordinance, 1905, is consolidated with the Stamp Ordinance, 1899, and enables unstamped or insufficiently stamped instruments, other than receipts, bills of exchange, promissory notes, or other negotiable securities, to be stamped after the execution thereof in the manner and subject to the penalties therein provided.

This Ordinance applies to instruments executed in the Colony on or after the date of its commencement, and to instruments executed previously which, for the purpose of this Ordinance, are to be deemed to have been executed on the date of its commencement, viz. February 20, 1905.

Summary Procedure (No. 3).—The Summary Conviction Offences (Procedure) Ordinance, 1905, amends a like Ordinance (No. 47 of 1895) by enabling the Supreme Court to award costs to the successful appellant against the other party, and makes such costs, after taxation by one of the judges of the Supreme Court, recoverable as provided in this Ordinance. In cases of assault the police may proceed against, and any stipendiary justice of the peace may convict, any person guilty of assault, notwithstanding the party aggrieved may decline to prosecute.

Currency (No. 4).—The Government Currency Notes Ordinance, 1905, repeals the requirement contained in a like Ordinance (1903) as to publication in *The Royal Gazette* of any alteration by a Secretary of State in the existing regulations under such Ordinance.

Military Local Forces (No. 7).—The Local Forces Ordinance, 1905, is consolidated with like Ordinances of 1899 and 1900, and empowers the Governor to appoint officers of the police and the volunteer forces to such rank as he shall think necessary in the local forces. In case of riot every detachment of the local forces sent to a place where it may have to act independently of the main force shall be accompanied by a justice of the peace, and take action only at his request to be made, if possible, in writing.

Escheats (No. 10).—This Ordinance enables the Governor to exercise the powers of waiver given by the Casual Revenue Ordinance, 1894 (not-

[1] Ordinances are made by the Governor with the advice and consent of the Legislative Council, and public and private Ordinances are numbered consecutively for the calendar year. Pursuant to the Law Revision Ordinance (No. 3), 1899, the Ordinances of the Colony from 1832 up to 1904 inclusive have been revised and collected into five volumes: the Ordinances being numbered consecutively throughout the whole edition. On May 1, 1905, these five volumes were, by the resolution of the Legislative Council, pursuant to the Law Revision Ordinance, approved as the revised edition of the Laws of Trinidad and Tobago. An index and a list of Orders in Council in two separate volumes were also published.

withstanding repeal by Ordinance No. 8 of 1902), of the rights of the Crown in all cases of persons dying without heirs and intestate before January 1, 1903, in respect of all or any part of their real estate, and revives the practice and procedure of the Ordinance of 1894.

Geological Survey (No. 11).—The Geological Survey Ordinance, 1905, gives the Government Geologist compulsory powers of entering upon land for the purpose of survey, but not upon any enclosed yard, court, or garden attached to a dwelling without the previous consent of the owner or occupier.

Savings Banks (No. 12).—The Savings Banks Ordinance, 1905, provides as regards deposits untouched for ten years that after the expiration of such period no interest shall be payable, and that after public advertisement in the colonial papers, unless a claim is established on or before the day appointed in the advertisement, the amount standing to the credit of such dormant account shall be transferred to the Profit and Loss Account of the Bank. If after such transfer a claim should be established to the satisfaction of the Governor, the whole or part of the amount, according as claimant appears entitled, may be paid to him, and such payment to the amount thereof shall exonerate from liability the Crown and the Government of the Colony, but if erroneously made the person entitled shall have the same remedy against the person to whom the payment was made, and for the amount thereof, as he might have had against the Crown and the Government of the Colony if such payment had not been made.

Patents (No. 13).—The Patents Ordinance, 1905, is consolidated with the Patents, Designs, and Trade Marks Ordinances, No. 76, vol. ii., and such consolidated Ordinances, being cited as the Patents, Designs, and Trade Marks Ordinances, provide that if by Order-in-Council the provisions of the Imperial Acts entitled "The Patents, Designs, and Trade Mark Act, 1883," and "The Patents Act, 1901," are applied to the Colony, then any applicant for protection of his invention, design, or trade mark in the United Kingdom, or in any foreign State with which, under the Imperial Act, international arrangements have been made for the mutual protection of inventions, etc., shall have like protection in the Colony in priority to other applicants, as from the date of his application in the United Kingdom or such foreign State. The application must be made in the Colony within twelve months from the date of the application in the United Kingdom or such foreign State, and until the protection is completed in the Colony no damages for infringement shall be recoverable. Provision is also made for intercolonial mutual protection based on reciprocal legislation.

Bakehouses (No. 15).—The Bakehouses Ordinance, 1905, contains stringent provisions of a sanitary kind in respect of the premises used for the purpose of baking bread, etc., and all the persons employed therein.

Constabulary (No. 16).—The Constabulary Ordinance, 1905, in its seventy-six sections, provides for the constitution of an armed constabulary force for the Colony, for the prevention and detection of crime, the

repression of internal disturbance, and defence against external aggression. This Ordinance is amended by the subsequent Ordinance, No. 26.

Public Service Widows', etc., Fund (No. 17).—The Public Service Widows and Orphans' Fund Ordinance, 1905, is consolidated with a like Ordinance (No. 174), and becomes operative on January 1, 1906. All pensions are thenceforth made payable out of the general revenue of the Colony, to the account of which all funds hitherto accumulated for this Public Service Widows', etc., Fund are to be transferred, and all future contributions from public officers paid. The Ordinance contains various provisions for revising rates of pensions and the management of the Funds, together with tables of yearly pensions and annuities.

Quarantine (No. 20).—The Quarantine (Convention) Ordinance, 1905, is declaratory of the adoption by the Colony of the provisions of the West Indian Inter-Colonial Sanitary Convention, 1904, and of the Quarantine Regulations based thereon, which are respectively set forth in the schedules to the Ordinance. Provisions are contained establishing a Quarantine Authority, with all necessary powers of administration and control, for the purpose of giving effect to the quarantine regulations made by the Ordinance.

Land Registration (No. 21).—The Real Property (Amendment) Ordinance, 1905, is consolidated with the Real Property Ordinance (No. 60), and enables the Deputy Registrar-General to perform the duties of the Registrar-General, but no such Deputy shall, unless a barrister-at-law or a solicitor and conveyancer act as examiner of titles, and subject to such restriction as to examination of titles any person other than a barrister-at-law or solicitor and conveyancer may be appointed to act as Registrar-General in the absence of such official on leave or otherwise.

Criminal Law (No. 23).—The Criminal Evidence Ordinance, 1905, enables every person charged with an offence, and the wife or husband as the case may be of such person, to be a witness for the defence provided that—

(*a*) The person charged elects to give evidence.

(*b*) The failure of the person charged to give evidence is not to be commented on by the prosecution.

(*c*) The wife or husband of the person charged elects to give evidence.

(*d*) The wife or husband is not to be compelled to disclose any communication made by the one to the other during marriage.

(*e*) The person charged, giving evidence, is to be subject to cross-examination, even if such tends to criminate him as to the offence charged.

(*f*) The person charged, giving evidence, shall not be examined so as to criminate him as regards any other offence than the one charged, unless (1) the proof of such other offence is admissible to show guilt as regards the offence charged; (2) he has given evidence of his good character or involving imputations on the

character of prosecutor or his witnesses; (3) or has given evidence against any other person charged with the same offence.

(*g*) All witnesses, unless otherwise ordered by the Court, shall give evidence from the witness-box.

(*h*) That the provisions of the Indictable Offences (Magistrates' Procedure) Ordinance and the right of the person charged to make a statement without being sworn shall not be affected by the Ordinance.

The Ordinance further provides that, if the only witness for the defence be the person charged, he shall be called after the close of the evidence for the prosecution, and the fact that the person charged is a witness shall not of itself give a right of reply to the prosecution. In proceedings for offences against the person, under the Married Women's Property Ordinance, and under the Summary Convictions (Offences) Ordinance, the wife or husband of the person charged may, without his consent, be called as witness; so likewise where at common law such witness may be called without consent of the person charged. The Ordinance is to apply to all criminal proceedings, but not to court-martials under Naval Discipline (Imperial) Act, the Army (Imperial) Act, and the Local Forces Ordinance.

Obscene Publications (No. 24).—The Obscene Publications Ordinance, 1905, gives power to any stipendiary justice of the peace to issue search-warrants for the discovery and seizure of obscene publications, and for their destruction, subject to and in accordance with the special provisions of the Ordinance.

Constabulary (No. 26).—The Constabulary (Amendment) Ordinance, 1905, is consolidated with the preceding and above-noted principal Ordinance (No. 16), which is amended as to period of enlistment, pensions, and as to the notice to be given as to retirement.

Justices of the Peace (No. 27).—The Justices of the Peace (Appointment) Ordinance, 1905, is consolidated with the Summary Conviction Offences (Procedure) Ordinance, No. 1, and enables the Governor by warrant under his hand to appoint justices of the peace for the whole Colony or districts thereof, as may be expedient, and by like warrant to remove them. All appointments previous to this Ordinance and acts done thereunder to be deemed valid and legal.

Food Adulteration (No. 28).—The Food and Drugs (Standards) Ordinance, 1905, is consolidated with the like Ordinance No. 162, and empowers the Governor in Executive Council to fix standards of purity for articles of food and drugs, and subjects to penalties all persons selling to the prejudice of the purchaser any articles of food or drugs not up to the standard of purity fixed pursuant to this Ordinance.

Public Markets (No. 30).—The Country Markets Ordinance, 1905, enables the Governor in Executive Council to declare by proclamation any

premises not within the limits of any borough to be a public market, and to issue by-laws and regulations for such markets.

Contagious Diseases (Animals) (No. 31).—The Contagious Diseases (Animals) Ordinance, 1905, is consolidated with the like Ordinance No. 165, and contains provisions for inoculation of animals against anthrax in places declared by an Order-in-Council to be an infected area.

Patents, etc. (No. 35).—The Patents (Amendment) Ordinance, 1905, amends the preceding Patents Ordinance, No. 13, as regards the time for making application, which in the case of a patent shall be within twelve months, and of a design or trade mark within four months, from the date of the application for protection in the United Kingdom, or any foreign State with which a patent arrangement is in force.

Bakehouses (No. 36).—The Bakehouses (Amendment) Ordinance, 1905, amends and is consolidated with the like Ordinance No. 15 (*vide ante*) in respect of the appointment of inspectors by the Governor for the purposes of such Ordinances.

Balata Gum (No. 37).—The Balata Gum Ordinance, 1905, makes it unlawful for any person to extract gum from balata-trees growing on Crown lands in the Colony.

8. WINDWARD ISLANDS.

(i) GRENADA.

[*Contributed by* Sir Charles J. Tarring, *ex-Chief Justice of Grenada.*]

Ordinances passed—13.

Quarantine (No. 2).—This Ordinance was passed to carry into effect the recommendations of a Conference of the several British West Indian Colonies held in Barbados in 1904 to consider the question of quarantine in the West Indies. The West Indian Inter-Colonial Sanitary Convention, 1904, is set out in the preamble and is adopted; and the regulations annexed to the Convention are set out in and form the first schedule to the Ordinance, and are, by s. 2 of the Ordinance, made operative as law in the Colony for the period of five years mentioned in clause 6 of the Convention. Provision is made for the appointment of officers for carrying out the regulations, and dealing with infected or suspected ships and persons.

Main Roads and By-ways (No. 5).—This Ordinance amends and consolidates the law relating to the important subject of the land communications of the Colony. The roads are classified and enumerated, the Colony is divided into four "Main-road Districts" with road wardens and road surveyors, and By-way Districts with wardens. The Superintendent of Public Works is made responsible for the maintenance of the roads in

the Main-road Districts in the Island of Grenada, and the Commissioner of Carriacou for the maintenance of those in the Road District of the Island of Carriacou.

The **Towns Administration** Ordinance (No. 6) consolidates the laws relating to the rating and management of the towns of the Colony.

The **District Boards** Ordinance (No. 7) establishes six boards for discharging the duties of the various local authorities in the parishes or districts of the Island of Grenada.

The **Jury** Ordinance Amendment Ordinance (No. 11) exempts members of the Legislative and Executive Councils and all salaried public officers from serving as jurors.

Interpretation (No. 12).—This amending Ordinance determines the date on which Ordinances of the Colony shall come into force, and provides for the statement thereof on the face of copies.

Public Health (No. 13).—This Ordinance makes compulsory the notification of cases of infectious diseases, and provides measures for preventing their spread.

(ii) ST. LUCIA.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed (1905)—11.[1]

Public Libraries (No. 1).—The St. Lucia Library Amendment Ordinance, 1905, is consolidated with the principal Ordinance, 1888, which it amends, in respect of the manner of constituting the trustees of the library and their power to make rules by requiring for such rules the approval of the Governor in Council.

Criminal Law: "Obeah" (No. 2).—The Criminal Code Amendment Ordinance, 1905, is consolidated with the Criminal Code, which it amends, by substituting for the definition of "obeah" the definition of "a person practising obeah," which is declared to mean "any person who to effect any fraudulent or unlawful purpose, or for gain, or for the purpose of frightening any person, uses or pretends to use any occult means, mesmeric or otherwise, or pretends to possess any supernatural power or knowledge." An "instrument of obeah" is declared to mean anything used by a person and pretended to be "possessed of any occult or supernatural power."

The Ordinance varies the Code in respect of the punishment for the crime of "obeah."

Public Roads (No. 4).—The Public Works and Roads Ordinance, 1905, contains forty-nine sections dealing with the roads (highways and by-ways)

[1] Ordinances are made by the Governor of the Windward Islands (St. Lucia, St. Vincent and Grenada), with the advice and consent of the Legislative Council of St. Lucia.

of the Colony. It creates the office of Colonial Engineer with prescribed duties, divides the Colony into road districts with administration for such district vested in a Road Board, and regulates the powers and duties of such Road Boards and contains general provisions as to width of roads, taking land for same, controlling rivers and streams, canal bridges, etc., and as to penalties and procedure in enforcing the law.

Road Tax (No. 5).—The Road Tax Ordinance, 1905, requires every male person above the age of eighteen years, with certain exceptions as defined, to pay in respect of his income half-yearly road taxes graduated according to the amount of his income arising from annual gains from property, profession, trade, or employment, whether carried on in the Colony or elsewhere.

Sanitary Law (No. 6).—The Quarantine Ordinance, 1905, adopts the West Indian Inter-Colonial Sanitary Convention, 1904, which is set forth in the preamble, and the Quarantine Regulations annexed to the Convention, which are set out in the schedule to the Ordinance, and empowers the Governor to appoint officials for the carrying out of the provisions of the Ordinance with powers, duties, and modes of procedure prescribed therein; and provides penalties for breaches of the quarantine and other regulations. The expenses incidental to the execution of the Ordinance are to be paid out of the general revenue of the Colony.

Land: Compulsory Acquisition (No. 10).—The Lands (Acquisition for Public Purposes) Ordinance, 1905, empowers the Governor to authorise persons to enter upon land for the purpose of survey, taking levels, or making borings, and enables the Governor to take land for public works (1) either by contract and agreement; or (2) compulsorily, with payment of compensation. Claims for compensation are to be determined by a board consisting of the Chief Justice of the Colony, one nominee of the Governor, and one nominee of the claimant, and in accordance with the procedure prescribed by the Ordinance.

9. LEEWARD ISLANDS.

[*Contributed by* ALEXANDER MANSON, ESQ.]

FEDERAL COLONY.

Acts of the General Legislative Council passed—11.

Sombrero Island (No. 1).—This Island is added to the Presidency of the Virgin Islands.

Pensions of Government Officials (No. 2).—This enactment amends the official Pension Code (Act 11 of 1902).

Supply.—Nos. 3 and 6 are Supply Acts.

Jury Laws (No. 4).—A small amending Act.

Quarantine (No. 5).—The object of the law is to enact a system of quarantine uniformity with all the other West Indian Colonies. A conference for that purpose was held in 1904 and the convention made between them is incorporated in the law as Schedule A, to have effect for five years. Each Colony is to notify to the other Colonies certain particulars when contagious or infectious disease is recognised to have arisen, and the measures taken to deal with it.

Schedule B is a code of quarantine regulations, nineteen in number. "Contagious and infectious diseases" are defined to include only cholera, plague, yellow fever, and smallpox.

Special provision is made to enable the Health Officer to deal with mosquitoes in the case of yellow fever; and with rats in the case of plague: also to keep passengers under surveillance when they are in a doubtful condition.

Article 19 of these quarantine regulations is to the effect that in cases of typhus fever, enteric fever, scarlet fever, etc., no measures are to be taken against a ship beyond isolating the sick, disinfecting the clothing, bedding and effects, and compartment of the ship, and surveillance of persons in contact with the sick. Besides the two schedules above referred to, there are fifty-six sections in the body of the Act. These provide for forming a Quarantine Board and appointing health officers, and for the levy of fees, expenses, and penalties; also for preliminary inquiries when a ship arrives, and the Quarantine Board thinks inquiry necessary, and for putting ships in quarantine.

Part IV. of the Act provides for enforcing the regulations of Schedule B.

Part V. provides for observation stations and isolation hospitals.

Part VI. deals with bills of health.

There are also penalty clauses and the necessary procedure for dealing with them. Four previous Acts dealing with quarantine are repealed.

Criminal Law: Small Charges (No. 7).—This Act amends No. 11 of 1891 in respect of assault upon police officers and persistent annoyance by beggars and others.

Agriculture: Cotton Industry (No. 8).—The Act No. 4 of 1904 for grants of advances to encourage cotton-growing is repealed, and the present amended law is put in its place.

Judicature: Supreme Court (No. 9).—Act 10 of 1903 is repealed and further amendments are made, rearranging the circuits and abolishing the separate circuit of the Island of Anguilla.

Obeah (No. 10).—S. 7 of the Law of 1904 regulating the punishment for this offence is amended slightly (see Journal, No. XV. p. 232).

Registration and Records (No. 11).—Instead of documents being copied into a register as heretofore, the applicant for registration is to furnish a copy to be bound up in the official register. Wills are an exception.

(i) ANTIGUA.

Ordinances passed—6.

Supply.—No. 1.

Defence Force.—No. 4 provides for forage allowance to mounted men.

Fumigation of Imported Plants (No. 5).—This is an Ordinance similar to that passed by Dominica in 1904, for preventing disease in plants under cultivation (see Journal No. XV. p. 235). All plants imported into the Presidency and the packages containing them are to be fumigated under the auspices of the Agricultural Authority, suitable apparatus for fumigation to be provided by the Government. The Agricultural Authority may require the importer to keep it informed as to the disposal of any plants after fumigation and may visit and examine them. The expenses of fumigation are to be borne by the Government.

Plants imported contrary to the Ordinance may be forfeited.

Customs (No. 6).—Shipbuilding materials other than rope and cordage are exempted from import duty.

(ii) DOMINICA.

Ordinances passed—9.

Municipal.—Nos. 1 and 7 amend the Town Board Ordinance of 1902 in respect of the making of voters' lists and elections to the Board.

Supply.—Nos. 4 and 9.

Telegraph and Electric Lighting (No. 6).—This Ordinance empowers the Public Works Department of the Dominican Government to enter on lands and to fix wires and apparatus for the Government electric works: such apparatus is not to be deemed to become part of the freehold. Penalties are provided for obstruction or damage, and compensation is to be made by the Government for injury to private property caused by the work.

Agriculture (No. 8—For the protection of certain classes of agricultural produce from theft).—Act 6 of 1887 is repealed. Cultivators desiring to sell their produce of the protected kinds must apply to the district magistrate for a licence. The magistrate may order an inquiry if in doubt; the licence when granted is valid up to June 30 following. When any produce of the protected kinds is sold, the seller must endorse the particulars in prescribed formed upon his licence. There is a penalty of £20, or four months' imprisonment, for failure to comply, and similar penalties for failing to show the licence when called for by an inspecting officer.

By s. 13 purchasers are required to take out a licence, paying a fee of £2; and such licence applies to only one place of business, and is valid until June 30 following.

By ss. 21 and 22 the purchaser is obliged to keep accounts in prescribed form, and to check and countersign the seller's account endorsed upon the latter's licence. Buying or selling protected produce otherwise than by licence is punishable by fine or imprisonment up to £50 or to six months'; and dealings by licence-holders are punishable if made after 6 p.m. and before 6 a.m. "Wet" cocoa (*i.e.* cocoa-beans not cured) is forbidden to be sold or bought except for planting in Dominica alone. Ss. 32-5 provide for the punishment of vagrants or persons suspected of illicit practices. Failing to prosecute and compounding offences under the Ordinance are also punishable. By s. 39 the Governor is empowered to add to the list of "protected produce."

Water Supply (No. 2), **Savings Banks** (No. 3), **Defence Force** (No. 5).—The law as to these is amended in some particulars.

(iii) MONTSERRAT.

Ordinances passed—9.

Tariff.—Nos. 1, 2, 4, and 9 are Tariff Ordinances. Nos. 5 and 6 deal with the duty on rum and other articles.

Supply.—Nos. 3 and 8 are Supply.

Agriculture (No. 7).—This Ordinance, although shorter and less detailed, is on the same lines as No. 8 of Dominica for 1905, noticed above under that Presidency, and the object is the same—namely, to provide for the detection and punishment of robberies of growing crops.

(iv) ST. CHRISTOPHER AND NEVIS.

Ordinances passed—8.

Cotton, Trading in (No. 1).—Every seller and every buyer of cotton must obtain a licence for the transaction, paying a fee of 1*s.* Every person who has obtained a licence to purchase must keep a record of purchases, and this is to be produced for inspection. Penalties are provided.

Licences for Dogs (No. 2).—All dogs above six months old must be licensed, the fee being 5*s.* in Basseterre and 2*s.* elsewhere. The licence is not transferable.

Wheel Tax (No. 3).—Bicycles are subject to taxation as "wheeled vehicles," but not tricycles apparently, nor perambulators.

Arms and Ammunition (No. 4).—The Governor in Council is empowered to forbid or restrict the importation of arms and ammunition; dealers must have a licence and keep books, and their stores and books are subject to inspection. A licence is also necessary for keeping or carrying arms.

Infectious Diseases (No. 5).—Infectious diseases are defined, with power to add to the category by rule made by the Governor in Council. The Governor is empowered to appoint local authorities to carry out the pro-

visions of the law, and to require them to provide hospitals and other necessary accommodation.

By s. 9 the local authority, upon information from a medical practitioner, may order any owner or occupier to cleanse or disinfect his house or premises.

S. 14 provides for removal to hospital of persons taken with infectious disease, and s. 24 empowers the Governor to authorise a medical practitioner to enter premises and examine when there is reason to suppose that a case of infectious disease has occurred. Powers are also given for dealing with epidemics.

Supply.—Nos. 6 and 8.

(v) THE VIRGIN ISLANDS.

Ordinances passed—7.

Tariff.—No. 1 imposes import and export duties.

Supply.—Nos. 2 and 6 are Supply.

Sombrero Island (No. 3).—By Act 1 of the General Council, mentioned above, the Island of Sombrero has been included in the Presidency of the Virgin Islands. This present Ordinance extends to Sombrero all the laws of the Presidency in force at the time.

Savings Bank (No. 4).—This is an Ordinance to establish a savings bank for the Presidency.

Excise (No. 5).—Any person may obtain a licence for retail sale on paying the fee of £2 in Road Town, or £1 if the house be outside the town limits.

Land and House Tax.—No. 7 provides procedure for recovery of taxes in arrear. The land or house is first liable to sale; and that failing, personal goods and chattels are to be brought to sale. A scale of costs is given.

XI. MEDITERRANEAN COLONIES.

1. CYPRUS.

[*Contributed by* STANLEY FISHER, ESQ., *President of District Court, Kyrenia.*]

Laws passed—11.

Antiquities (No. 4).—This Law, which came into operation on August 25, 1905, repeals the former Law on the subject—the Ottoman Law dated 20 Sefer 1291. For giving effect to the provisions of the Law a body, with executive and advisory functions, called the Museum Committee,

is constituted (s. 39), and a fund called the Cyprus Antiquities Fund is established (s. 46). Antiquities are defined by s. 2 to be "all works whatever of architecture, sculpture, or any graphic art, or art generally, which date from the most ancient times up to the Turkish Conquest of the Island,[1] such as any buildings or architectural memorials, sculptured stones which originally belonged to such memorials, and pedestals, ramparts, tombs, dressed stones, statues, reliefs, statuettes, inscriptions, paintings, mosaics, vases, arms, ornaments, and all other works and utensils of any material, gems for rings, coins, and generally all objects of antiquarian interest."

A proviso to the definition excludes coins of Byzantine, Lusignan, and Venetian times. All antiquities are the property of the Government, subject to such rights of private possessors as are conferred by this Law (s. 3). All persons who at the date when the Law came into force possessed antiquities were required to furnish the Museum Committee within six months of that date with descriptive lists of them (s. 4) and produce any of them for inspection by the Committee if required (s. 5). Since the expiration of the six months antiquities which should have been included in a list, and were not so included, are liable to seizure and forfeiture to the Government, unless the possessor proves that the non-inclusion was due to no fraud or deceit (s. 6). Any person who fortuitously finds an antiquity must give notice within five days of finding it to the police, and must indicate the spot where it was found, and hand it over if portable. Failure to comply with these requirements renders the finder liable to a fine up to £50 or imprisonment up to six months, or both penalties, and involves the forfeiture of his interest in the antiquity (s. 7).

Finders who comply with the requirements of s. 7 are entitled to one-third of the portable antiquities found, the owners of the site to one-third, and the Government to one-third. If the finder is himself the owner of the site, he takes two-thirds. Provision is made for determining whether the partition shall be in kind or in value (s. 8). Persons in possession of antiquities may be called upon to prove lawful acquisition, or compliance with the provisions of s. 4, and failure to discharge the onus involves liability to a fine of £50, or imprisonment for six months, or both these penalties (s. 9).

"Ancient monuments" are such structures, erections, monuments, or sites as may be declared ancient monuments by notification by the High Commissioner in *The Cyprus Gazette*. Where the "ancient monument" is not in the possession of the Government, such declaration can only be made on the advice of the Museum Committee (s. 10). A duly declared "ancient monument," even though belonging to a private person, must not be altered in character or demolished without the written permission of the Museum Committee confirmed by the High Commissioner. A contravention of this provision by a private owner vests the ancient monument in the Govern-

[1] A.D 1571.

ment, besides rendering the owner liable to the penalties imposed by s. 13. With the sanction of the High Commissioner, and if the owner so desires, the Museum Committee may make grants for maintaining, preserving, or restoring any ancient monument (s. 11).

Provision is made for compulsorily acquiring ancient monuments not already the property of the Government, and in estimating the compensation the archæological value is not to be considered (s. 12).

To destroy, injure, deface, etc., and to remove stones without a permit from an ancient monument are offences punishable with a fine of £10, or imprisonment for two months, or both these punishments (s. 13). Provision is made for restoring, preserving, and protecting ancient monuments (s. 14), and for appointing local committees to safeguard them (s. 15). The Museum Committee, with the High Commissioner's sanction, may carry on excavations (s. 16), and private surface rights may be compulsorily acquired for the purpose (s. 27), but this power of acquisition does not extend to property of a religious character, nor to property belonging to the Moslem Evcaf, or to any ecclesiastical body, nor can any one interfere or deal with any of such kinds of property under the provisions of this Law without the permission of the Chief Cadi in the case of Moslem property, of the bishop of the diocese in the case of property of the Greek Orthodox Church, and of the person administering the affairs of the religious community in Cyprus in the case of property of any other Church (s. 28).

Antiquities discovered in the course of excavations by the Museum Committee belong to the Government (s. 17). Persons deliberately excavating for antiquities without a permit, even on their own land, are liable to a fine of £50, or imprisonment for six months, or to both punishments, and any resulting discoveries will be confiscated (s. 18), and persons purchasing antiquities which they know, or have reason to believe, were excavated in contravention of this section are liable to the same penalties (s. 19).

Application for permits to excavate must be in writing to the Chief Secretary to Government, and must describe succinctly the place for which the permit is required (s. 20). Subject to compliance with provisions made in the interest of the owner of the land, and of public convenience, the High Commissioner, with the advice of the Museum Committee, may grant permits (s. 21). Permits must not be for longer than two years, and the High Commissioner may insert conditions (s. 22), for the due performance of which security may be required (s. 23). The High Commissioner, acting upon the advice of the Museum Committee, may withdraw the permit at any time without compensation to the holder (s. 24), or may renew it for a further term of two years with the same or a variation of the conditions upon which it was originally granted (s. 25).

The authorised excavator acquires no right in any antiquity excavated: they belong to the Government; but the Museum Committee, with the High Commissioner's approval, may allow the excavator to take casts, or

may give him duplicates out of his discoveries, or give him any antiquities for which they have no use (s. 26). Antiquities in which the Government have an interest under this Law may not be moved from place to place in the Island without a permit (s. 29); persons reasonably suspected of contravening this provision may be detained and searched (s. 30).

The sale or gift of antiquities duly listed under s. 4 or acquired under ss. 8 or 26 is allowed, but notice thereof must be given to the Musuem Committee (s. 31). Export of an antiquity without the written permission of the High Commissioner involves liability to a fine of £100, or imprisonment for twelve months, or both these penalties, and entails the forfeiture of the exporter's interest in the antiquity (s. 32). Permission to export will not be given until the antiquity has been shown to the Museum Committee, or their agent, and they are satisfied that it has been duly acquired, that there is a similar article in the Museum, or that they have lost their right of acquisition under s. 37 (s. 33).

Persons who receive or keep an antiquity with intent to defraud the Government are liable to a fine of £50, or imprisonment for six months, or to both penalties (s. 34). The Museum Committee may acquire the interest of any private person in any antiquity, and the price to be paid is to be ascertained by arbitration in default of agreement (s. 35). Upon paying the price, or giving security for the payment, the antiquity becomes the property of the Government (s. 36). If the price is not paid, or security given within six months of the agreement, or of the decision of the arbitrators, the Museum Committee lose their right to acquire the antiquity (s. 37).

Part VI. of the Law (ss. 38-45) makes provision for the establishment of museums under the regulation and control of the Museum Committee. The principal museum must be in Nicosia, but with the approval of the High Commissioner museums may be established in other parts of the Island.

Part VII. (ss. 46-9) contains financial provisions. All payments by the Museum Committee out of the Cyprus Antiquities Fund must be sanctioned by the High Commissioner (s. 47). Persons giving information about offences under the Law may be awarded a portion, up to one-half, of the fine (s. 50). Persons wilfully injuring or defacing anything declared by the Law to be Government property are liable to be fined £10, or to be imprisoned for two months, or to both these punishments (s. 51). No person other than an authorised excavator or his agent may publish any scientific account of excavations until the expiration of two years from the termination of the work, and authorised excavators must give the Museum Committee a copy of any book or work they may publish relating to their excavations (s. 52). The High Commissioner may, with the advice of the Museum Committee, appoint a Curator of Antiquities and other experts and agents for carrying out the Law (s. 53).

Securities for Debt (Offences and Protection) (No. 6).—This Law is intended to protect creditors whose debts are secured on immovable property against fraudulent depreciation of the value of the security. The Law makes such depreciation, and its wilful permission, an offence punishable with a fine not exceeding £20 or imprisonment for not more than one year, and puts the secured creditor in the same position as the owner for the purpose of protecting his security.

Food and Drugs (No. 7).—This Law is on the lines of the Imperial statute law on the subject.

Exemption from Seizure and Execution (No. 8).—This Law repeals the former Law on the subject (17 of 1890) and increases the number and amount of animals, articles, and goods which are exempt from seizure and sale for taxes and civil debts.

Reprint of Statutes (No. 9).—This Law provides for the preparation of a revised edition of the Statute Laws of Cyprus. It is on the lines of similar colonial laws, *e.g.* Grenada, the Gold Coast, and Lagos. The new edition is to comprise all the Laws passed by the Legislative Council since the British Occupation which are in force on a date to be notified by the High Commissioner, and may also contain (*a*) any Imperial Statutes in force in or relating to Cyprus; (*b*) the Imperial Orders-in-Council in force in Cyprus; and (*c*) any orders made by the High Commissioner in Council, and Rules and Regulations made under any of the Cyprus Laws which are included in the revised edition. The new edition may be brought into force by a Proclamation by the High Commissioner issued under the authority of a resolution of the Legislative Council.

2. GIBRALTAR.

[*Contributed by* ALBERT GRAY, ESQ., K.C.]

Ordinances passed—7.

Nuisances.—An amendment of the law of nuisance made by No. 7 may be interesting to householders in other parts of the world: "The occupier of any house or apartment in which between the hours of 10 p.m. and 5 a.m. any person shall continue to make an unreasonable and unnecessary noise not in accordance with the ordinary and natural user of such house or apartment, after being required to desist, to the annoyance of persons residing in the neighbourhood," is subjected to penalties on summary conviction.

The other Ordinances are in the nature of private Acts. One of them (No. 6) was disallowed.

3. MALTA.

[*Contributed by* ALBERT GRAY, ESQ., K.C.]

Ordinances passed—6.

Pensions.—The rules for Civil Service pensions in England are adapted to the Maltese service by No. 2. There is voluntary retirement at sixty, compulsory retirement at sixty-five, with a saving for special cases, where extension of not more than five years may be given. Pensions are not to exceed two-thirds of salary except in cases of "peculiar and extraordinary merit."

The other Ordinances are normal or of the character of private Acts.

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NOTES.

The late Professor Maitland.—Tennyson tells us how, when in early youth he heard the news of Lord Byron's death, he kept repeating to himself "Byron is dead! Byron is dead!" Something like the same sense of overpowering loss must be felt in regard to Professor Maitland's death as we contemplate not only what he has accomplished, but what he might have accomplished. The Editors' tribute to his gifts and genius will be found recorded in the biographical notice that accompanied his portrait in the Journal some eighteen months ago. Since then he had added fresh laurels to his fame.

The following article is from *The Times* of December 24:

The death of Professor F. W. Maitland, which we mentioned on Saturday, is an irreparable loss to legal and historical literature and to his very many friends, who feel it the more keenly that the news is unexpected. He was always in precarious health. He was forced again and again to fly from our climate, and when he left for the Canaries, to winter there, it was known that he was unusually ill. But the blow comes with cruel suddenness even to some of those who knew him best. It is too soon to measure accurately or even approximately the loss. He had accomplished much. Into certain years of his life he had compressed work of the highest order in a way and to a degree not surpassed by any one of his generation. The goodly show of volumes of the Selden Society are in a sense his achievement; and he has, perhaps without knowing it, formed a school for investigators anxious to imitate his ways. But so much more seemed attainable and probable, with his faculties in their vigour, with his methods of investigation formed, with material collected and many regions explored by him alone. He might have lighted up many dark corners of the past. He might have completed the history of English law; and, in the opinion of those who knew him well, had he turned his attention to some of the questions of to-day, he would have said things to which his generation would have listened gladly and with profit. He had not spoken in public his mind as to many matters upon which he had clear-cut opinions.

It is as a historian, and in particular as a true discoverer in history, that his best work was done. He belonged to the race of great scholars who create as well as arrange and collect. He was the peer of such men as Fustel de Coulanges, and, we are tempted to add, with some due reservations, of Grimm and Mommsen. He had the industry, the ingenuity, the penetration, and that something akin to divination which marked them and such as they. In his books, essays, and many introductions are recorded veritable discoveries; new truths brought to light by the exercise of the same faculties as those of the masters of physical science. To the world in general he was known as a writer of eminence on legal subjects, as the editor of *Bracton's Note-book*, and

of volumes of the Year Books; as an investigator second to none in the mass of manuscript records in the British Museum, the Record Office, and the libraries of some of our colleges; and as the joint author of a laborious history of English law. Some who had looked closer into his work were struck by the range of his knowledge. No one living was more familiar with the best juridical literature of France and Germany, or followed more attentively its development. Much of the most valuable contributions to legal literature in these countries never finds its way into books. The results of exhaustive researches are interred in some *Zeitschrift* or *Jahrbuch* accessible only to scholars. Bad health and many occupations notwithstanding, Mr. Maitland never failed to note whatever grains of gold were hidden in the dark pages of some Halle or Göttingen publication. He had, too, what is denied to all but a few historians—an outlook into many fields of science other than that which was his own. He saw its relation to political economy. He was familiar with the philosophical and ethical controversies which, unknown to the ordinary lawyer, lie behind the rules of his craft. He delighted to drop the *rôle* of the historian and to launch out into far-off speculations. One of the last of the essays, charming as well as learned and acute, which he threw off in the intervals of freedom from graver work, was a discussion of *Moral Personality and Legal Personality*; a discussion of the fiction, if such it be, which every system of law is obliged to invent if it is to accommodate itself to concrete facts. No other English writer has pushed home with more effect criticisms of this perennial device than has Mr. Maitland in half a dozen pages of what seems on the surface to be only good-humoured chaff. "We do not like to be told," he says in one or two characteristic sentences, "that we are dealing in fiction, even if it be added that we needs must feign, and the thought will occur to us that a fiction that we needs must feign is somehow or another very like the simple truth." He was not satisfied with the current philosophy or jurisprudence of the matter; with the explanations, supercilious and superficial, of Austin, for example. "As to our national law, it has sound instincts, and muddles along with semi-personality and demi-semi-personality towards convenient conclusions. Still, I cannot think that Parliament's timid treatment of the trade unions has been other than a warning, or that it was a brilliant day in our legal annals when the affairs of the Free Church of Scotland were brought before the House of Lords, and the dead hand fell with a resounding slap upon the living body." These words recall another trait of Mr. Maitland's; his abounding humour which wells up unexpectedly when he is guiding his readers across some arid mediæval desert.

We have said nothing of other gifts; of his style, singularly mobile, varied, and always living, passing from colloquialism to eloquence; his imagination, which discerned the dramas of life underlying some lines in a Court roll, which touched things old, dead, or parched, and made them live; and the wholesome good sense disciplining his ingenuity and saving him from illusive discoveries. We have said nothing of his self-effacement and "unaffected modesty," qualities which he says in his biography of Sir Leslie Stephen belonged to his friend. Nor have we mentioned other things the first to be noted in him, and the last to be forgotten; in particular, his strong, sweet genial nature, his deep-seated courtesy of spirit, and a certain simplicity and spaciousness of character which made Mr. Maitland rich in friends who will long remember him.

The late Professor Langdell.—Much more attention has been paid in the United States than here in England to the methods of legal education.

They have their reward. The Harvard Law School—to name only one—enjoys a world-wide reputation. Thirty years ago it had its three professors and its 115 students. To-day it has a faculty of ten professors and 750 students whose ardour for knowledge is worthy of a mediæval university ; and this transformation it owes largely, by common consent, to the influence of the late Professor Langdell. There is a chorus of praise of him in the November number of *The Harvard Law Review*. What was the secret of his success? It was not brilliancy : he was slow, laborious, unimpassioned. The keynote of his educational power was his thoroughness. It was illustrated in his methods. Up to his time the student at Harvard had listened to lectures, and read treatises, and "memorised" generalisations. Professor Langdell showed him by precept and example that it was better, in Coke's words, "to seek the sources of the law than to follow the rivulets," and what were these sources, these "springs," but the reported decisions of the Courts? The plan, as worked out, was that the instructor should reprint from the reports the cases adapted to show the growth of legal doctrine, that the student should master five or six cases in preparation for each class-room exercise, and that the exercise should consist of stating and discussing these cases, and solving related hypothetical problems. It was the inductive method applied to the science of law. Biography is history teaching by examples. Through cases jurisprudence teaches by example —each case is an object-lesson. The educational revolution did not succeed at once. There were Langdellians and anti-Langdellians, as there were Greeks and Trojans in the Oxford of the fifteenth century, but to-day the triumph of Professor Langdell's method is complete, and the tree is known by its fruits.

Naturalisation of "Natives."—We have received from Sierra Leone an interesting judgment by Mr. Justice Hudson, of the Supreme Court, in which he discusses several interesting questions, and among others one of great constitutional importance, viz. whether a native chief in a British dependency or protectorate can be the naturalised subject of a foreign State. A native named Wilberforce was tried for a capital offence ; and among the points made in his favour by counsel was one to the effect that if he was a "native" within the meaning of s. 2 of Ordinance No. 33 of 1901, he ceased to be such when he became in 1878 a naturalised American citizen. Some nice questions as to the election of native chiefs were also raised. But the two more important points for decision were whether the Courts of the Protectorate could exercise jurisdiction over one who was an American subject, and whether a native chief could be naturalised. As to the first, the Judge said :

> The Circuit Court, which consists of a Judge of the Supreme Court of the Colony, has jurisdiction over all persons within the Protectorate for all offences, excepting in the case of a non-native charged with an offence involving the punishment of death. It could not, and I believe would not, be contended by any

Foreign State that the Courts of this Protectorate have not as full jurisdiction over their subjects as the Ordinance confers (Hall's *Foreign Jurisdiction of the Crown*, pp. 214, 217, 219). "Correlatively also to the protection which can be claimed for him (that is, the citizen of a foreign State), his Government must consent to the exercise of jurisdiction over him, others must be protected against him as fully as he is against others: if he must be given the opportunity of suing, he must submit to be sued: if a person is punished for committing a crime against him, he must be liable to punishment on committing a crime himself." If this reasoning is correct, the United States Government cannot, and will not, deny the right of the Courts of the Protectorate to criminal jurisdiction over their subjects in this Protectorate: there remains the question whether their subject can be a native within the terms of the Ordinance.

As to the second point—

It may be worth while to consider for a moment what naturalisation in a foreign State means. Why does a State admit a citizen who was not born in it? Is it in order that existing citizens who bear its burdens may protect him against the rest of the world? Surely not! Surely we must look for a mutual gain accruing to both State and adopted citizen. What then is expected by the State of a citizen whom it protects? In regard to the American State, in 1873 Mr. Fish, then a Secretary of State, issuing instructions to the American Minister in France, quoted a dictum of Chief Justice Marshall, to which I will refer, and explained the principles on which the American Government then acted, in protecting its subjects abroad (*vide* pp. 239 and 240, Wheaton's *International Law*). Did Wilberforce perform no act which changed his position as an American citizen when he became paramount chief of a part of a British dependency? Was not his situation as an American citizen completely changed, when by his own act he made himself the subject of a foreign Power? "If on the one hand the Government assumes the duty of protecting his rights and privileges, on the other hand the citizen is supposed to be ever ready to place his fortune, and even his life, at its service should the public necessities demand such a sacrifice," says Mr. Fish. Can he whose life and services belong to a dependency of Great Britain be ever ready to place both life and fortunes at the service of a foreign State? This Court has been asked to look at the Naturalisation Acts of America and Great Britain (Consular Regulations, United States of America, 1896). It is quite as Mr. Thompson submits, there is a prescribed form in the Convention of 1871 made between the Sovereign of Great Britain and the United States of America, for a person who was originally a British subject, but became naturalised as an American, resuming his British nationality, and it is not suggested by the Crown that Wilberforce has ever subscribed to such forms (American Act, s. 2165 sub-ss. 1, 2, 3). That is to say, if in 1878 Wilberforce became naturalised in America, he renounced for ever all allegiance and fidelity, expressly by name be it understood, to the Sovereign of our Empire. Must it not be held that his position as paramount chief of the Imperri is absolutely inconsistent with such an oath, and that in fact, when he accepted the paramount chiefdom of the Imperri he then and there abjured altogether his American citizenship? Oh but, says his counsel, what of the prescribed form? What of it indeed? Did this Government know of his American citizenship of twenty years before? Obviously it did not. If Wilberforce knew that his American citizenship must be extinguished in a particular way, and he did not disclose the fact of his citizenship, there was *mala-fides* on his part which possibly would prevent his being freed from the obligations of his citizenship in

the United States, but such as assuredly took away from him altogether any right to claim the protection of the United States while in this country. It is not the duty, indeed it is not within the capacity, of this Court to pronounce whether in the view of the American Courts every rag and tatter of his citizenship would be held to have fallen from him if he were now in America. So far as the United States are concerned, all this Court says is that it declines to hold that a chief of a British dependency in British territory may be an alien, and owe allegiance to a foreign Power. It is not going too far to say that the maxim "Salus rei publicæ suprema lex" directly applies. Imagine if such a possibility were admitted, in the unhappy event of a war with the United States of America, such a chief would be bound to fight against the British. All it comes to, so far as this country is concerned, is that certain legal formalities were not complied with by the prisoner that have been agreed upon by the Governments of Great Britain and America, in the event of a change of citizenship from one State to the other: the effect, as I have said, might be to render Wilberforce liable to certain obligations in the event of his returning to America, and on the other hand, might preclude him from claiming the protection of this country as a citizen thereof when in America: but with all that this Court has no concern. The one fact stands out, he is a native chief of a British dependency: the one pre-eminent quality that is required of him is loyalty to this Crown as against the world. This Court is asked to hold that he is still under the sanction of an oath which he took more than a quarter of a century ago, renouncing for ever all allegiance and fidelity to that Sovereign to whom alone he owes all allegiance. This Court declines so to hold. It holds that when he became chief of the Imperri he abjured the oath taken twenty years before. Whether any actual oath was administered to him I do not know: there is no evidence of that: but his act of accepting the chiefdom was in itself a vow of loyalty, since he became a vassal chief of territory which had been ceded to the Crown by his forebears. This Court would go further and would hold, unless and until overruled by some higher judicial authority, that any paramount chief of the Protectorate does, from his position, owe allegiance to the British Crown against all other States, and would decline to regard such chief as an alien, no matter in what foreign State he claimed to be naturalised.

The Judge did not apparently consider whether Wilberforce might belong to two nationalities.

An American Lawyer's Opinion of English Courts.—To *The Green Bag* Mr. Thomas Leeming, a Philadelphia lawyer of great experience, contributes a series of interesting articles describing his impression of our Courts. On the whole, his opinion is highly favourable. Of course he sees several defects. "A jury trial strikes one as more cut-and-dried in an English than in an American Court." The element of surprise is eliminated; "what American lawyer would not feel that half the fun of life were gone" if a witness might not be confounded with the sudden production of a conclusive letter? The examination of witnesses is conducted slowly, and with "a certain lack of snap"; and English barristers do not know their cases so well as American lawyers, the reason being that they had not been in direct relation with the parties, and have not "grown up with the case." Counsel's "openings" are needlessly long. But, in the main, Mr. Leeming's opinion is highly

eulogistic. "Every feature of an English Court" is "eminently practical and free from form or affectation." "American proceedings tend to be somewhat conventional, diffuse, and dilatory; pitfalls and traps are occasionally laid by astute practitioners which embarrass the side really in the right, and delay a conclusion upon the merits. . . . English legal proceedings, on the contrary, are colloquial, flexible, simple and prompt—thoroughly in touch with the spirit of the times and with the ordinary man's everyday life." Mr. Leeming bestows especial praise upon the procedure in the Masters' Chambers.

Evidence in Russian Courts.—In a recent number of the *Zeitschrift für Internationales Privat und Öffentliches Recht* is an elaborate article by Herr Klibinski on the Russian Court of Civil Procedure. It contains some peculiar provisions as to evidence; among others, one to the effect that the relations of the parties in direct line, ascending or descending, as well as persons who might profit by the decision in the case, need not give evidence. Evidence on the part of children against their parents, or of husband and wife against each other, is not admissible. Then, too, on the objection of one of the parties to a suit, a large number of persons, including near relations, are disqualified. It is to be noted that priests and monks who are witnesses need not take an oath. Nor can it be administered to children under fourteen, or in certain cases to children before confirmation. These provisions appear to indicate a distrust of the tribunals and a fear that, left to themselves to appreciate evidence according to its weight, they would go wrong.

Ante-nuptial Incontinence and Roman-Dutch Law.—A recent case of *Shaw* v. *Shaw* in the Natal Law Reports on this subject furnishes an instructive commentary on the English law as declared by Sir Francis Jeune a few years ago in *Moss* v. *Moss*. In that case, it may be remembered, a groom was engaged to a nurse in the same service, and had married her without noticing anything to arouse suspicion. Less than a month after the marriage she gave birth to a child which was not his, and he petitioned to have the marriage annulled on the ground of fraud; but Sir Francis Jeune did not see his way to giving him any relief. Neither by the law of England nor by the canon law is ante-nuptial unchastity any ground for annulling a marriage. Roman-Dutch law, it would seem from *Shaw* v. *Shaw*, is more strict in the matter. Pregnancy existing at the time of the marriage, and not known to and uncondoned by the husband, entitles him, by that law, to a decree of nullity of marriage. But there must be pregnancy. There appear to be some early Dutch authorities—cited by Kersteman—according to which mere ante-nuptial incontinence or *stuprum* is enough, the ground being that the husband has been cheated and has a right to repudiate his bargain. But the Natal Court in *Shaw* v. *Shaw*, after a very careful examination of these authorities, refused to accept this principle, and held that to entitle a husband to relief there must be over and above ante-

nuptial incontinence a condition of pregnancy existing at the date of the celebration of the marriage. The spouses take one another for better or worse, and it would indeed be introducing a disastrous uncertainty into marriage if it might be dissolved whenever one of the spouses happened to be a person "with a past." Voet, it is true, says, "If any one promise to sell me gold and instead of gold offer me copper, can I be said to have agreed for copper?" But the Natal Court has decided that what Voet was referring to was the case of a woman *enceinte* by another.

"**The Commercial Codes of the World.**"—This work is now in preparation in Germany under the joint editorship of Dr. Josef Kohler, Heinrich Dore, and Dr. Felix Meyer of Berlin, and Dr. Hans Trumpler of Frankfort. It is a great undertaking, but its importance is commensurate with the scale of the work. If there is one phenomenon which more than another strikes us as we survey "the crowded scenes of human life" to-day, it is the growing intercourse among nations, and more especially their commercial intercourse. There must be few businesses of any sort now which have not dealings with foreign countries, and to all these it is of the first importance to have full and correct information as to the laws regulating commercial transactions in the countries with which they have such dealings. Shareholders, for instance, in an English company who are not acquainted with the interpretation put by the French Court in *Re Construction, Limited*, on our Company Convention with France may be startled to find that they are, in France, shareholders in a French, and not in an English company, and similar surprises may await them under German company law. The value of a work like this *Commercial Codes of the World* is that it enables business men to ascertain their true position in commercial dealings, and not with France and Germany only, but with a list of States as long as the catalogue of the ships in the *Iliad*—States spread over Europe, America (North and South), Africa, and Asia. The commercial codes of all these States are to be translated into four languages, German, French, English and Spanish, and each translation is to be supervised by a competent commercial lawyer of the country into whose language the translation is made. There will be an historical introduction. a bibliographic summary, and a sketch of the legal procedure for enforcing commercial claims. "Commercial code" is to have the widest meaning, and will include unwritten as well as written law, customs which have acquired the force of law, treaties of commerce and navigation, consular codes, and by-laws or statutory rules supplementary to the commercial codes. The work will take—approximately—eight volumes of 800 pages each, and will be completed in eighteen months; the price will be 25*s.* a volume or 6*d.* per part of sixteen pages. This is reasonable enough. Jurists, practising lawyers, and men of business will all alike welcome such a work; for the information which it will contain is just of the sort which it is most difficult—as things are—to arrive at.

Dredging Concessions by Gold Coast Chiefs.—The latest report of the Gold Coast Local Committee of the Society (Francis Smith A.C.J., A. Willoughby Osborne, and T. Hutton Mills) contains a note of an interesting decision as to the right of chiefs to grant dredging concessions over tidal waters of a river. The judgment was delivered by Mr. Justice Pennington on June 9, 1906, as follows:

These inquiries refer for nearly their total length to the tidal part of the River Ancobra. The claimants have got under their leases dredging rights; rights of cutting timber on banks; rights of building sheds, works, tramways and bridges upon the banks; and finally "all the rights of an owner in fee simple," whatever this may mean in a lease. Now so far as the native law is concerned, it would appear from the evidence called by the claimants that the whole country had a right to fish in this part of the Ancobra, wash gold on the banks, and dive down to bed of river to raise mud for washing. I cannot help thinking that this was a *jus publicum* subject only to payment of one-third of the produce to the riparian chiefs; it is not quite clear from the evidence whether this right is only applicable to the tidal portion, but I have no doubt that the witnesses were talking of the lower part of the Ancobra River. I cannot therefore see how even under native law the riparian chiefs could give away this public right. As regards the law of the Colony, I cannot see that the claimants are in any better position. The Order in Council of September 1901 annexed the whole of the territories described in clause 11 to the British Crown. There is no doubt that the whole length of the river which is covered by these concessions is within these boundaries. By English law the whole of the bed of a tidal river vests in the Crown.

I am bound to say that I think that the Order in Council above mentioned would vest all lands in the Crown, but as the Crown has never exercised such rights I think a grant to the chiefs should be presumed.

This is specially so in the light of the previous history of the Colony. But the Crown, according to English practice, does not include foreshore and beds of tidal rivers in its grants and claims all these in the absence of an express grant to a subject.

If the English law is not in force here as regards the foreshore and tidal waters, then the *jus publicum* according to native law still exists, and the claimants can get no exclusive rights to dredge in the river. Certificate of validity will therefore be refused so far as the tidal portions are concerned—that is, up to the mark end of tidal waters on sheet 3A of Kortinkan Concession. Certificate will issue for the remainder.

A Criminal Lawyer on the Criminal Classes.—In *The Prisoner at the Bar*, Mr. Arthur Train gives interesting and instructive sketches of the results of his wide experience as Assistant District Attorney of New York, that is as prosecuting counsel. They throw no small light on the origin of crime and the administration of the Criminal Law. Mr. Train's large experience makes him an entire disbeliever in the existence of a distinct criminal class, with marked physical or mental peculiarities. It is far from true that a majority of the "real criminals are mentally defective"; many who are not technically criminals merit that description. "The man who adulterates his milk, to make a little extra money, is in the same class as the financial

swindler. One waters his milk, the other his stock. The forger belongs to a class whose heads the criminologists delight to measure, but they would not measure your milkman's." To the same category belong certain low legal practitioners who, according to Mr. Train, infest the Police Courts of New York, and are not unknown in higher tribunals. There is a story told of one of those "shysters," whose clients were chiefly among the poor Italians of New York. He was accustomed to display prominently upon a table in his office a small Testament and a huge Webster's Dictionary. After his clients had stated their case, he would turn to them and ask :

"Do you wish the law from the big book or the little book?"

The clients would inquire the relative cost.

"The law from the little book is ten dollars—the law from the big book is twenty-five dollars."

The clients would consult together, and on the assumption that the bigger the book the better the law, would almost invariably pay twenty-five dollars and procure the best advice which Noah Webster could give.

The Hon. Pember Reeves on New Zealand Legislation.—A meeting of the Society was held on July 20, in the Hall of the Law Society by the kind permission of the Council of the Law Society. The chair was taken by Sir John Gray Hill, and an extremely interesting address was given by the Hon. Mr. Pember Reeves on the Legislation of New Zealand under the auspices of the late Mr. Seddon. The starting-point, said Mr. Reeves, of the great mass of experimental law-making which had made New Zealand so famous or notorious was the year 1891. This legislation was generally summed up as Socialistic, and so in a broad sense it was. In the Colonies the tendency undoubtedly was that when a man ceased to be a mere Conservative he took up some kind of practical Socialistic policy. Why the democracy of the Colonies should have shown this tendency towards State Socialism, while the great democracy of the United States had gone, until recently, so much on quite a different line, would form a very interesting study. In spite of its Socialistic tendencies the aim of the State in New Zealand, at present at any rate, was not to intervene in the field of private enterprise, so as to drive out the private employer, or to monopolise fields of industry to itself. What the State did was to interfere in the way of inspecting and regulating private industry, and this it certainly did to an extent which was, he believed, unparalleled in any other democratic community in the world. Whatever the Constitution of New Zealand might be in theory, the actual results of the way in which it was worked and the distribution of power and influence it brought about resulted in making it the most democratic community that existed. With regard to the franchise, the property qualification for electors had been practically destroyed. All were upon precisely the same level. A man or a woman under their system of adult suffrage had one vote only, and an elector could only be registered

in one constituency. The women in the Colony made a very general use of their vote, in almost a larger proportion than men, and there was no sign that they would cease so to use their votes. He was often asked his opinion as to the results of female suffrage in New Zealand, and his answer was that, so far as he could tell, it had done no harm either to the women themselves, to the other sex, or to the community. On the other hand, it was only fair to say that female suffrage had not given the effects for good which some had anticipated. The land policy of the Progressive party in New Zealand was not in the direction of land nationalisation, but rather towards keeping down the size of the holdings. In spite of what was heard of the large State holding in land, he pointed out that 17,000,000 acres were held in freehold, and of the rest portions were held in leasehold from private owners and the native tribes, while the remainder was held temporarily by tenants of the Crown. They possessed in New Zealand a graduated income tax, State arbitration in trade disputes, which had resulted in stamping out sweating and putting an end to strikes and lock-outs, a system of State insurance, an arrangement by which the State advanced money to allow people to settle on the land, a local option law, and a system of old-age pensions under which all deserving persons of sixty-five years of age and upwards were entitled to a pension of 10*s.* a week.

In a short discussion which followed, and in which the Right Hon. Arthur Cohen, Sir Frederick Pollock, and Mr. Justice Williams—a Judge of the Supreme Court of New Zealand, and son of the late Joshua Williams, Q.C.—took part, Mr. Justice Williams contributed a very interesting commentary—from the judicial side—on various aspects of the progressive legislation sketched by Mr. Reeves.

Corps de Droit Ottoman.—"Recueil des Codes, Lois, Règlements, Ordonnances et Actes les plus importants de Droit Intérieur et d'Etudes sur le Droit Coutumier de l'Empire Ottoman. Par George Young, M.V.O., 2me Secrétaire de l'Ambassade d'Angleterre. Oxford: At the Clarendon Press. The Editors have received four more volumes (iii., iv., v. and vi.), completing this invaluable work. They reserve the notice of it to the next Journal.

"**Bulletin des Internationalen Arbeitsamt.**"—It is satisfactory to learn that an English edition of the *Bulletin des Internationalen Arbeitsamt*, which has hitherto appeared only in French or German, will be published in English. The Arbeitsamt has already done at Basle much excellent work in helping to level up the factory legislation of different countries, and the simultaneous publication in three languages of a *Bulletin*, which gives information as to Statutes and Ordinances affecting labour throughout the world, cannot fail to be useful. We note in the latest number of the *Bulletin* an account of the treaty between France and Belgium, as to insurances for accidents; another of the labour treaties, which may at no distant date be more numerous than commercial treaties.

A Lay of Indian Law.—An old contributor and friend of the Journal, Mr. Vicajee of Bombay, has sent us "A Lay of the Indian Law" in hexameters. We are unable to comply with his request to publish in full this rhymed survey of the extraordinary changes in Indian law from its dawn—a survey which (preserving neutrality as to its poetical merits) is curious. Of the immense changes which come before the poet-seer in his retrospect, he says

> The most wondrous that I saw
> Was the change in judicature for the ministry of law.

He describes the judges who "from their fog-fed atmosphere migrated to the sun-lit strand." There is no note of discontent, no expression of doubt, as to the beneficence of the march of events. Mr. Vicajee —who is a very learned lawyer, if not a poet—sees good everywhere. His last lines are words of hope:

> Thus industrial institutions in both countries seem to draw
> Their Empire vast, towards one Bench, one Bar, and one Imperial law.

Immigration Legislation in Australia.—Mr. Everard Digby, writing from Sydney, points out that since 1903 many causes have concurred to create a wish for a larger population in Australia. The good harvests—especially of wheat—since 1904 have awakened a new interest in agriculture. The ever-increasing army of the town unemployed has threatened the control of the trade unions. Protectionists have become alarmed for their markets. The birth rate is declining. National defence demands a large supply of men. All these things have led to a relaxation of the restrictions on immigration. In the Act of 1901, s. 3 (*a*), a "prohibited immigrant" was defined as "any person who when asked to do so by an officer fails to write out at dictation and sign in the presence of the officer a passage of fifty words in length in a European language directed by the officer." In the Act of 1905, No. 17, s. 4 (*a*), this is replaced by the following: "Any person who fails to pass the dictation test—that is to say, who, when an officer dictates to him not less than fifty words in any prescribed language, fails to write them out in that language in the presence of the officer." Here it will be observed the word "European" drops out and the officer "dictates" not "directs" the sentence to be written.

Another clause (s. 3 [*g*]) of the Act of 1901 classes under "prohibited immigrant" "any person under contract or agreement to perform manual labour within the Commonwealth"; but this is not to apply to workmen exempted by the Minister for special skill required in Australia or to persons under contract or agreement to serve as part of a crew of a vessel engaged in the coasting trade in Australian waters if the rates of wages specified are not lower than the rates ruling in the Commonwealth. In the Contract Immigrants Act, 1905, No 19, this is replaced by the following (s. 4): "Every contract immigrant (being a person under contract

to perform manual labour) unless otherwise prohibited is allowed to land if the terms of the contract are approved by the Minister, and the contract —which is to be in writing—is made with or on behalf of a person resident in Australia." Then comes the qualification—s. 5 : "The Minister shall approve the terms of the contract only (1) when a copy is filed with him and, if he so requires, is verified by oath ; and (2) if in his opinion

(*a*) the contract is not made in contemplation of or with a view of affecting an industrial dispute ; and

(*b*) there is a difficulty in the employer's obtaining within the Commonwealth a worker of at least equal skill and ability (but this paragraph does not apply when the contract immigrant is a British subject, either born in the United Kingdom or descended from a British subject there born) ; and

(*c*) the remuneration and other terms and conditions of employment are as advantageous to the contract immigrant as those current for workers of the same class at the place where the contract is to be performed ; and

(3) if where the approval is sought after the contract is made, the contract contains a copy of this and the immediately preceding section and is expressed to be made subject thereto ; and (4) before the contract immigrant has landed in the Commonwealth."

An immigrant may land temporarily, but he is liable under a penalty to answer truly within one year from entering the Commonwealth any officer who may ask him if he has so entered under contract (s. 7). The Governor-General may also by Order published in the *Gazette* direct that from and after a date to be therein specified the immigration of contract immigrants intended to be brought to Australia for or in connection with or in contemplation of a dispute relating to industrial matters shall be prohibited subject to such exceptions and limitations as are expressed in the Order, and from the date so specified the Act of 1901 is to govern immigration. This reservation would seem to be only an *ex abundanti cautela* and need not be interpreted as detracting from the value of the concessions made by the new policy.

Statute Revision in Trinidad and Tobago.—Mr. Wallwyn P. B. Shepheard, writing with reference to this important work, says :

"In Trinidad and Tobago the problem of codification presents more than the usual difficulties to which the preliminary work of revision and consolidation is also subject ; this arises from the fact that the sources of law are Spanish as well as English : old laws of Spain and English Orders in Council, Letters Patent, Imperial Acts of Parliament, and the Colonial Ordinances themselves.[1]

[1] The article on "Real Property Law in Trinidad and Tobago," by H. Clarence Bourne, Esq., of the Inner Temple, Barrister-at-Law, which appeared in the Society's Journal for December, 1897, indicates, in relation to real property, the difficulties of the mixed Spanish and English law.

"Trinidad and Tobago were acquired by conquest, confirmed as to Trinidad by the Treaty of Amiens, 1802, and as to Tobago by the Treaty of Paris of 1814. They were constituted one Colony by Royal Order in Council in 1888, pursuant to the Imperial Act 50 & 51 Vict. c. 44.

"*The Articles of Capitulation of Trinidad.*—The French historian, M. Piere-Gustave-Louis Borde,[1] referring to the *Articles of Capitulation of Trinidad* of February 18, 1797, between the Spanish Governor and General Sir Ralph Abercromby, draws attention to the fact that no stipulation was made on behalf of Spain for the retention of the Spanish law (except as to then existing contracts and sales); or of the Royal Cedula of Colonisation of 1783; or the *Code Noir*; a Royal Cedula promulgated by the Spanish Court at Aranjuez on May 31, 1789, for the protection of slaves in the Spanish colonies. But Great Britain, in the early days of her acquisition of Trinidad, permitted the inhabitants to retain many of their old Spanish laws: She could not well do otherwise; they had come under allegiance to the British Crown, and as British subjects their legal convenience demanded equitable consideration. But a conflict of laws soon manifested itself, and the State Trial of General Picton—the first Governor—for an administrative act done pursuant to Spanish law, is an historic incident associated with the difficulties arising from the retention of that law.

"*The Gradual Substitution of English Law.*[2]—In consequence of many complaints as to the operation of the various laws, a Commission of Legal Inquiry was in 1823 appointed by Royal Warrant and resulted in an exhaustive Report, with various recommendations, amongst which were that the age of majority should be twenty-one instead of twenty-five; the introduction of the English mode of trial in criminal cases; the gradual substitution of such parts of English law as were better adapted to the then state of society in the Colony than the Spanish law, and the constitution of a Council so as to secure to all classes of the inhabitants control over the expenditure.

"By Royal Instructions, April 25, 1831, and his commission, the Governor was empowered to appoint a Council of Government, and full power was vested in him to make laws with the advice and consent of the Council for the order and peace and good government of the island. The Council came into existence in 1832 as the Legislative Council; the legislative power of the Governor in Council was not exclusive, but concurrent with and in some respects subordinate to, the direct legislative power of the Crown by Orders in Council and Letters Patent and the legislative power of the Imperial Parliament. The body of law which resulted from these

[1] *Histoire de l'Île de la Trinidad*, par M. Piere-Gustave-Louis Borde, Paris, 1882.

[2] The article in relation to this Colony contributed by Louis Wharton, Esq., barrister-at-law, Port of Spain, Trinidad, in response to the Society's request for information as to "Modes of Colonial Legislation," and which appeared in the issue of the Society's Journal for December 1897, has been referred to on this and other points.

concurrent legislative sources constituted the Statutory Law of Trinidad, and it is this law, commencing in 1832 with Orders in Council then existing, and ending December 31, 1904, which has been the subject-matter of the recent Statutory Revision now under review.

"*The Revision of the Statute Law.*—The Statute Law Revision Ordinance, 1899 (Trinidad and Tobago), empowered the Governor to appoint Commissioners, not exceeding three in number, for the purpose of preparing a revised edition of the Statute Laws and of all Orders in Council in force in the Colony, with various powers, which are detailed in the Ordinance.[1] This Revision Ordinance further declared that the Revised Edition of the Laws and Orders in Council, upon the same being approved by the Governor-in-Council, should become the substantive Statute Book of the Colony. The Commissioners[2] appointed by the Governor in 1899 to carry out this important and difficult work were the Hon. Nathaniel Nathan, Q.C., Attorney-General of the Colony; His Honour Thomas Baynes, Puisne Judge of the Colony; the Hon. Vincent Browne, Q.C., Solicitor-General of the Colony. By resolution in due form pursuant to the Revision Ordinance the Legislative Council approved the revised edition on May 1, 1905.

"*The Revised Edition.—The Laws of Trinidad and Tobago* is the title of the revised edition of the Statutes which came into force on May 1, 1905. It consists of five volumes: the Ordinances are numbered consecutively throughout the whole edition. No dates or other particulars of the superseded Ordinances are given, but two other supplementary volumes are published, one entitled: *A Chronological Table of Ordinances from* 1832 *to* 1904, *showing those which have been repealed and the Place in the Revised Edition of those in Force.* This is followed in the same volume by 'An Index to the Revised Edition of the Laws of Trinidad and Tobago.' The other supplementary volume is entitled: *Orders in Council, By-Laws, Rules, and Regulations, etc., in Force on December* 31, 1905, *Trinidad. Printed at the Government Printing Office, Port of Spain,* 1905. This volume is divided into three parts:—Part I. Orders in Council, printed in full, which include all Orders in Council relating to Privy Council Appeals. Part II. Chronological Table of Orders in Council; being a list, in order of date, of Orders in Council published in the *Royal Gazette* from 1874 to 1905. Part III. Alphabetical list of By-laws, etc.

"*Illustration of the Consolidation.*—It is impossible, within the limits of available space, to do more than give a bare illustration of the nature of the work. The Summary Conviction (Offences) Ordinance, No. 122, has revised and consolidated twelve Ordinances from 1868 to 1901 inclusive, and with this is consolidated the Magisterial Procedure Ordinance, No. 276;

[1] These are given in this Journal (New Series, No. 6, December 1900), in the Review of Legislation (Trinidad and Tobago) for 1899.

[2] It does not appear on the face of the volumes who actually performed the work of revision.

and the Savings Bank Ordinance, No. 146, is the revision and consolidation of six Ordinances (1889 to 1900), the first of which is the revision of previous Ordinances.

"*The Operation of the Revised Edition.*—Time and experience will alone supply the real test of the value of this revision; whether it has varied in any way the legal effect of the statutes which have been superseded. Should the edition stand that test—and one can detect no evidence why it should not—then the Colony may be congratulated on the completion of a valuable and most beneficial labour in its behalf. But this revised edition should contain on its title-page the intrinsic evidence of its being published by authority and be made subject to a saving clause in favour of the original Ordinances in the event of any repugnancy being discovered."

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